

PRIVACY: A PHILOSOPHICAL SKETCH AND A SEARCH FOR A THAI PERCEPTION

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This article introduces readers to the concept of privacy in two discourses — a western liberal discourse and a Thai scholarly discourse. It is divided into two sections accordingly. The first part of the article discusses the philosophical and historical roots of the privacy concept, its importance in various dimensions, and an evolving debate whether privacy is a universal moral value. The second part is a review of related literature on privacy in Thailand.

Philosophical and Historical Roots of “Privacy”

The dominant discourse on privacy is situated within the framework of western cultural traditions. The many conceptual presuppositions associated with privacy today reflect deep-rooted and evolutionary products of a social development, in particular, western liberal traditions. In wrestling with the highly

volatile, vague and controversial concept of privacy, many writers from diverse backgrounds have attempted to define it with some verbal precision. Table 1 provides a listing of some of the more prominent definitions and concerns encompassing “privacy” as given by many authors over the years. This listing is intended mainly to give some insights into the way privacy has been conceived by western thinkers. It bears no intent to supply an all-embracing definition or an exhaustive set of definitions for the concept.

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Table 1

List of some of the important definitions for “privacy”

Writers/ Year of Publication	Definition(s) of “privacy” given
Samuel Warren and Louis Brandeis / 1890	the right of an individual to be let alone.
Alan Westin / 1967	the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others
Charles Fried / 1968	that aspect of social order by which persons control access to information about themselves
Arthur Miller / 1971	the ability (of individuals) to control the circulation of information relating to them
Judith Jarvis Thomson/ 1975	a right that was derived from clusters of other (individual) rights, especially “rights over our own persons” and “rights over our own property”
Ferdinand D. Schoeman/ 1985	1) claim, entitlement, or right of individual to determine what information about himself (or herself) may be communicated to others; 2) measure of individual control over information about himself/ herself, intimacies of personal identity, or who has sensory access to him/her; and 3) a state or condition of limited access to a person

Source: Samuel D. Warren and Louis D. Brandeis, “The Rights to Privacy,” *Harvard Law Review* 4 (December 1890): 195; Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1967), 7; Charles Fried, “Privacy,” *Yale Law Journal* 77, no. 3 (January, 1968): 475-93; Arthur R. Miller, *The Assault on Privacy: Computers, Data Banks and*

Dossiers (Ann Arbor: University of Michigan Press, 1971), 211-16; Judith Darvis Thomson, “The Right to Privacy,” *Philosophy and Public Affairs* 4, no. 4(Summer 1975): 303; and Ferdinand David Schoeman, ed. *Philosophical Dimensions of Privacy: An Anthology* (Cambridge: Cambridge University Press, 1984), 2-3.

With the exception of the definitions given by Warren and Brandeis, and Judith Jarvis Thomson, all the other definitions of "privacy" listed above exhibit a concern with information privacy that has emerged as a major area of privacy debate in industrialized western countries since the 1960s. The Warren and Brandeis' classic definition was more oriented towards physical privacy, one that, they feel, was increasingly eroded by the operation of the news media. Meanwhile, Thomson's definition featured an effort to undermine the view that privacy is a separate category of right, in and of itself. This exception aside, all the above definitions are rooted in classical liberal doctrine with its emphasis on an individual's possession of certain natural rights. In this western legacy of privacy, the natural rights in question are framed in terms of private rights of individuals against intrusive or unjust acts by others particularly public authorities.

While several contemporary writers on privacy have drawn upon the philosophical insights of classical advocates of liberalism and liberal democracy such as John Locke and John Stuart Mill,¹ the historical precedents which have shaped the individualistic theory and practice of privacy date back to even earlier social and cultural trends in western society. In his seminal anthropological study on privacy, Barrington Moore notes that all civilized societies, even as early as classical Athens and ancient Hebrew, are likely to display some form of awareness of the conflict between private and public interests. While fourth-century Athens is cited as an exemplary case of strong awareness of this public-private

conflict, Roman society is viewed as the opposite model of such legacy. The Athenian tradition, with its emphasis on libertarian and egalitarian ideals, also provides a favorable background for the development of private rights against the arbitrary abuse of authority by the state. Without such a democratic line of development, Moore argues, private rights could not survive because:

only where the people have power are they in a position to erect effective barriers against the misuse of power, the capricious intrusion into what they conceive as their own affairs.²

The Athenian legacy lived on through the Middle Ages and evolved further with the development of the notion of the peoples' right of resistance to an unjust king³ and the practice of immunity in feudalism⁴ in the areas outside of Roman influence. Although this divisive tendency separating the public and private realms subsided during the period of royal absolutism in Europe, which reached its height in the seventeenth century, it became visible again during the subsequent periods of the Enlightenment, the industrial revolution and the birth of liberal capitalism in the eighteenth and nineteenth century.

The Enlightenment, which featured a gradual spread and popularization of philosophies stressing the preeminence of reason and the individual, bolstered further ideas associated with private rights. Prominent philosophers in this period, namely Immanuel Kant and John

Locke, have fostered the notion of a social contract between the individual and the state, with the latter having inherent limits in its power over the former.⁵ This liberal concept of state-individual (public-private) relations, it is worth emphasizing, antedates the introduction of democratic principles and institutions, which did not amount to anything before the nineteenth century.⁶ As many writers on privacy argue, this liberal political philosophy has contributed much to the creation of a body of laws that explicitly recognize the individual's right to privacy.

The emergence of the bourgeoisie and free wage labor, which replaced feudalism and traditional craftsmanship guilds, gave rise to economic individualism under which private property came to mean "the right to do as one wanted with one's own."⁷ Unlike in feudal society where private property has a more or less land-proprietary character, the case in bourgeois society is the opposite since it has become entirely dominated by capital. Under capitalism, the main forms of private property are factories, offices, machinery and most important of all, money. As a medium of circulation of capital, money permits the acquisition or disposal of goods between persons who are widely separated in space and time. This contributes to a greater degree of individualism and privacy of trading parties who could be totally anonymous if they wish.

With the continued expansion of commerce and industry, this individualist trend became widespread in society at large, while fundamental social changes associated with urbanization and indus-

trialization propelled the evolution of individual privacy further. This process of modernization which took place in the West in the late eighteenth century contains mixed implications for individual privacy. On the one hand, the changing social structural trends increased both the physical and psychological opportunities for privacy as evidenced in such phenomena as the nuclear family living in individual households, the anonymity of urban life, mobility in work and residence, and the weakening of religious authority over individuals. On the other hand, modern societies also create large bureaucratic organizations with their insatiable appetite for information on people, new and more pervasive surveillance technologies, and most importantly, the modern state with its technological and military capacity to create the utmost forms of social control.⁸

From the nineteenth century onwards, the consolidation of liberal democracy, as a political system and ideology, gradually became a viable force in shaping the importance of privacy in many modern western societies. When the first philosophical and legal writing about "privacy" appeared in the US in 1890, the authors' understanding of privacy was notably founded upon a strong liberal premise, with its emphasis on individualism and liberty. In this article, Samuel Warren and Louis Brandeis see privacy as an individual's means of withdrawal from society so that they can be "let alone." After a long interval of three-quarters of a century, privacy, provoked by technological changes and the growing demand of formal organizations for information on

people, became again a major topic of philosophical interest in the 1960s. Writings that emerged during this period were also dominated by the liberal view of privacy. Although there are several works that tried to broaden the relevance of the concept of privacy from an individual basis to a larger social concern, they failed to develop this aspect as fully as they had the importance of privacy to the individual. Among these, Edward Bloustein argues that privacy can be seen as a social value and a community concern, but he still bases his acknowledgement of this social importance of privacy on the "preservation of the individual's dignity."⁹ Meanwhile, Carl Friedrich, evidently inspired by democratic ideas, expresses concern about the political implications of privacy, which he conceptualizes as "the boundary between public and private." According to Friedrich, while privacy has a distinctive function in maintaining a particular political order — democracy, this functionality operates through individuals by ensuring them basic dignity "which is so crucial a constituent element of a democratic belief system."¹⁰ Friedrich is not alone in recognizing the importance of privacy to a democratic system and in arguing that the destruction of a private sphere is tantamount to totalitarianism. Alan Westin articulately contrasts the functioning of privacy and its converse, surveillance, in democratic and totalitarian systems:

Just as a social balance favoring disclosure and surveillance over privacy is a functional necessity for totalitarian systems, so a balance that ensures strong citadels of individual and group privacy and limits both disclosure and surveillance is a prerequisite for liberal democratic societies. The democratic society relies on publicity as a control over government, and on privacy as a shield for group and individual life.¹¹

In all, it is quite clear that the philosophical arguments about privacy up until the 1970s tend to bolster liberal democracy as they are, implicitly or explicitly, associated with the concepts of individual rights, limited government, the rule of law, and a separation between the realm of state and civil society. In this light, the importance of privacy can be seen in different dimensions which are not necessarily mutually exclusive of each other. After all, individuals are a part of a society and obtain the concept of self from society and through social interaction. Insofar as western liberal democratic societies are concerned, privacy is important because it enables the development of a certain type of individual who forms the basis of a liberal democratic society.

A universalist claim to privacy ?

With the prominent exception of Barrington Moore's work, earlier writings on privacy seem to base the claim that privacy is an important value on empirical and philosophical evidence that is mainly limited to the West. Although Alan Westin may have tried to escape this Western bias by alluding to animal instincts as the origin of human claims to privacy, he was referring more to privacy in a physiological sense rather than privacy in the political sense of rights protecting individuals against intrusive or unjust acts by others, particularly public authorities. Physiological privacy covers human needs or desires to be secluded from others in such physiological activities as excretion, secretion, and copulation, to name but a few.¹²

Evidently, there is an important distinction to be drawn between "privacy" in these two senses, and it is doubtful if a connection can always be established between them. Although Westin recognizes the difficulties in making cross-cultural comparisons regarding norms of privacy in different societies, he still insists that privacy (see Westin's definition of privacy in Table 1) appears to be a cultural value in all known human societies although the form it takes, or the name it is known by, may vary enormously. In arriving at this conclusion, Westin, who relies heavily on secondary evidence compiled from cultural anthropological research in many "primitive" societies, has in effect conflated two aspects of privacy — physiological and political — into one. Meanwhile, he also elevates privacy and the private realms of behavior to a uni-

versal and indispensable role in the functioning of all human societies. In the same vein, another anthropologist, Robert Murphy, argues that privacy, as a means of social distance, is operative in and significant to all societies and not only western individualistic societies.¹³

By contrast, Moore is vehement about distinguishing the two aspects of privacy in his conception of privacy. He argues that while it may be safe to presume that the desire for physiological privacy is a panhuman trait,¹⁴ such is not the case for privacy in the political sense. The latter, he argues, is more culturally relative and specific since it depends more on a process of socialization and acculturation. In very simple societies — defined as societies without chiefs or any political organization, Moore argues that privacy in the sense of rights protecting the individuals is completely missing although awareness of and desire for physiological privacy may be present. This is because there is no organized public authority against which it would be necessary to create such rights. However, there may exist rights against other individuals, which may take the form of tacitly accepted social circuit breakers or rules governing the etiquette of access to other persons.

In any case, Moore appears to be more interested in private rights against public authority rather than private rights against other individuals. While he has never made the linkage between the liberal roots of privacy and the conception of privacy explicit, Moore, as earlier mentioned, is vocal about associating the political aspect of privacy with democracy. Without democratic devel-

opment, Moore is skeptical whether privacy and privacy rights can manage to grow at all. Powerful rulers, he argues, are bound to avoid granting rights against the misuse of their authority because such rights are both a limitation on, and a threat to, their dominance. Even in societies where there is a recognition of the distinction between public and private realms of behavior, this awareness does not necessarily translate into the protection of individuals against the abuses of public authority. Citing the case in ancient Chinese society, Moore points out how early Chinese thinkers were very much aware of the public-private distinction and yet the authoritarian rule of the ancient Chinese society provided practically no formal basis for protection of ordinary individuals against the intrusive abuses of public authority.¹⁵ Similar to the Chinese, ancient Indian or Japanese political traditions also lacked the formal protective shield that resembles the right of resistance in the West. This tradition of rights against authority, argues Moore, has developed much further in, and is possibly unique to, the West.

While Moore's insight may shed some light on the cultural dispensability of privacy in some societies, his study is generally limited to social and cultural trends in societies remote in time and space from the modern West, where privacy initially emerged as a basic right or legal entitlement. Several contemporary Western writers indeed consider privacy a modern value, which has been expanding along with many other basic rights and social values since modernity began to evolve in Western Europe in the eighteenth century.¹⁶ Some of these

writers tend to highlight another aspect of privacy — that of morality — which Moore fails to discuss. In so doing, they have also accorded privacy the status of a universal norm.

Writings that emphasize the centrality of privacy to morality generally follow three related strategies. One is to demonstrate that respect for privacy is a key component in the more general regard for human dignity. The appeal here is to such conditions as moral integrity, individuality, consciousness of oneself as a being with moral character and worth. Control of one's private sphere is, seen in this light, as essential to a person's "dignity as a human being." Violating privacy is thus regarded as immoral.¹⁷ Another strategy is to illustrate that respect for privacy as integral to one's understanding of oneself as a social being with varying kinds of relationships, each in its way important to a meaningful life.¹⁸ The third strategy is to stress how respect for privacy is conducive to democracy, which is defined not only as a kind of polity or society but also as a set of moral ends. In other words, these approaches attempt to demonstrate a connection between respect for privacy and certain individual, social, and political ideals.

In many ways, the above ideals reflect a normative orientation that is clearly liberal. The fundamental premise of this moral bearing is that individuals qua individuals have moral rights that serve as constraints on government and others — constraints that are under the control of the right holder. Since these rights are predicated upon an assumption that every human being is endowed

with powers of reason, they are seen by liberal advocates as universal rights or norms which are applicable to all people in all places at all times. At one extreme, the preservation of privacy can be seen as a universal value or right in itself. More frequently, however, it is seen as a value to be balanced with others or occasionally as a means to realize other related values and norms which are regarded as universal human properties.¹⁹

It is clear, from the discussion above, that what liberals see as universal norms grounded in the universal character of humanity are in fact particular norms embedded in shared understanding of a specific culture and tradition, that of liberal western civilization.²⁰ In essence, the liberal defenders of privacy, with their universalist claims and individualist presuppositions, have succumbed to the same flaws that their rights-oriented liberal peers have come under criticism for. First, they committed an epistemological error by articulating a universalist claim to a certain rights-based concept of morals while presupposing a substantive — historically and culturally specific — concept of the good. Here, universality is ironically reasoned with an Occidental understanding of the world and the belief in the moral superiority of the West.

Secondly, in their conception of privacy, the liberal champions tend to emphasize the notion of liberty and freedom primarily from the standpoint of individual rights and with little regard for social or community-based concerns. The liberal ideals of moral autonomy and individual self-development are fundamentally based on an atomistic and abstract

concept of the self as the subject of rights. Even when merged with democratic principles and practices, these ideals could amount to only one version of liberal democracy, in both a normative and empirical sense, that is, the liberal-pluralistic type. With this predominantly liberal grounding, privacy can be “a pre-condition, not of democracy per se, but of a particular type of democracy — one that is individualistic, possessive, and non-communitarian, rather than participatory and communitarian.”²¹ Closely linked to these two types of democracies are two types of individualism as outlined by C.B. Macpherson — possessive individualism and emancipatory individualism. The former views an individual human being as essentially a consumer of utilities, with unlimited right of property holding and with very limited social responsibility to society. The latter, on the contrary, sees a human being as a doer and an exacter who is capable of developing most fully his uniquely human capacity and of contributing to a development of a free and equal society.²²

In studying privacy in a non-western setting, it makes sense, given the theoretical analysis above, to focus more on an instrumental dimension of privacy rather than an aesthetic dimension. Ontologically, privacy can be broadly understood in two dimensions — aesthetic and strategic.²³ In the aesthetic dimension, privacy is generally conceived as an end in itself since it embodies a certain humanistic value or set of values which are subsumed under the same philosophical rubric such as human dignity, individual freedom and self-identity. In the strategic dimen-

sion, privacy is seen as a means to advance to other ends in the form of rights or interests that do not necessarily reflect the liberal individualistic ideals. Such ends would include social participation, political autonomy, and bureaucratic and democratic accountability, among others.²⁴ According to Colin J. Bennett who focuses more on the data protection (or information privacy) issue, the problem can be analyzed at three levels — humanistic, political and instrumental. The humanistic and instrumental levels correspond directly to Rule's two notions of privacy above. The political aspect, however, emphasizes the political implications of government's control over the collection, use and dissemination of personal information and argues for citizens placing limits on the power of the state to ensure democratic accountability. Democratic accountability is a particularly interesting dimension in a cross-cultural analysis for while it may be somewhat taken for granted in some advanced democratic societies, it is an idealistic end for many societies struggling to advance their democratic development. Privacy or data protection can therefore serve as an intermediate to acquire this political end.

To pursue an analysis of privacy in a culture where privacy is not a substantive social value, I feel that the latter two dimensions of privacy — political and instrumental — be emphasized. Through this instrumental approach, one can avoid being confined to the value-laden and western-centric liberal concept of privacy and possibly expand it to a broader social significance. After all, what is at stake in the privacy issue

is not only an individual right in limiting intrusion by others and in controlling circulation of personal information about oneself. Equally, if not more, important, is the notion that privacy serves as a restraint on how organizations use their power vis-a-vis individuals and other social groups.

A Thai conception of “privacy”: a Thai historical and philosophical overview

This part traces the evolution of privacy in Thai society. Since privacy is not an important cultural value in Thailand as is the case in the West, relevant research or anecdotal evidence are scarce and there has been no established framework to study the issue in the Thai context. What this chapter does is to explore existing literature, particularly in the anthropological, political and sociological disciplines, that pertain to privacy in an effort to construct a broad framework to understand the status of privacy, or lack of it, in Thailand.

Anthropological evidence of privacy in Thai society

The Thai language does not have a word for privacy but refers to it by descriptively translating from English as *khwam pen suan tua* or *khwam pen yu suan tua*, meaning “the state of being private.” According to a prominent Thai anthropologist, the Thai public-private divide is inherently distinct from that of the West.²⁵ Citing the example of an interior design of traditional Thai houses in the Northeast, this anthropologist points out how the room which is considered

most private — the “spirit room” — can be shared by all members of the family. This “spirit room,” he explains, is usually located in the center on the least accessible corner (from outsiders) in the house and is considered a sacred space that needs to be protected from outside intervention. Meanwhile, this room is also designated as a space where all family members perform religious rituals and functions together, since it is where the ancestral shrine and the ashes of the ancestors are kept. What this signifies, he says, is that the traditional Thai conception of privacy is fundamentally collectivistic. It is the kind of privacy that is shared by intimate members of the same household. By this token, individualistic privacy is said to have no place in traditional Thai culture.

Similar to the interpretation above, a recent anthropological study at a local university found privacy implications in the evolution of house forms and habitation patterns of a group of Thai peasants in the Central Region over the past one hundred years. When these peasants were first settled in this region, their habitation units featured large common space, which was used for several purposes — social rituals, work space, and playground — and relatively small living space — kitchen and sleeping areas. It should be noted that most of these traditional houses do not have separate bedrooms, as the family usually sleep together in one big central room. Most of the common space, which was regarded as social space, was located outdoors so that neighbors could join in the activities. But as the capitalist economy grew and took over the peasant community, traditional farming was no longer

adequate to cope with the modern way of life. Many farmers became migrant labor to the city and new farming technologies were adopted by those who still do farming to increase production. With more time freed up and with the penetration of television, many farmers find themselves spending more time indoors. This directly affects the house form. Most evident is the way that the private space has been increasing at the expense of the common space. Separate rooms with doors are now common in peasants' houses and so are rooms with new functions. For instance, the emergence of TV/living room has become a norm for architectural patterns across the peasant community in the Central Plains.

What this means is that privacy in the physiological sense may be increasing in this peasant community. But this may have no bearing whatsoever on “privacy” in the sense of private rights against the intrusion of others, particularly those with authority.

Buddhism and human rights

In studying the conception of “right” in Thai society, many scholars, foreign as well as Thai, usually turn to the one most potent philosophical force that has shaped Thai culture for centuries — Buddhism. One of the central concepts in Buddhism that has greatly influenced the Thai world view is that of “karma.” Under the law of “karma,” a person's status or duty in the present life is dictated by the deeds done in his or her past life. As a result, social inequality is traditionally looked upon as part of one's destiny, and as something that is not necessarily problematic. A mainstream

and somewhat reductionist interpretation of this Buddhist outlook gives rise to a widespread impression that most Thais, who are Buddhists, do not believe in natural rights or freedom that make all human beings equal. Such predisposition thus leads Thais to apathy and disinterest in struggling for human rights in the fashion understood in the West. Similarly, another influential Buddhist concept of the “middle path”, which emphasizes moderation and implies conflict avoidance, has also been interpreted as a hindrance to the development of human rights in Thai society.²⁶

While it is true that Buddhist philosophy may not be very conducive to the development of human rights and values that are esteemed in the West, one should not stretch it so far as to fall into a religious determinism trap. After all, religions, whether it be the philosophical ideas or the institutional establishments, are frequently exploited by human actors as a means to achieve certain social ends, with varying results. Such is the case with the law of “karma” which has been narrowly interpreted to justify strict class divisions in traditional societies so that the domination of the ruling classes could be sustained. Apart from its discouraging message of predestination, there is also an inspirational dimension to the law of “karma,” according to another more recent interpretation. Since this law is seen in the Buddhist view of the world as propelling the existence of beings through cycles of death and rebirth, it is also said to provide a condition for each human individual to attain emancipation through good deeds and enlightened understanding about life during one’s lifetime. In

other words, freedom is not something that human beings are born with in Buddhism. It does not come naturally but can be acquired through such means as self-control, meditation, and knowledge derived from the study and observation of “dharma” — the teaching of Buddha.²⁷

With the emphasis on individual capacity to seek and attain emancipation, Buddhism is said to bear some resemblances to liberalism.²⁸ However, the two philosophical traditions diverge in their goals and conception of human emancipation in accordance with the different social contexts in which they evolved. While liberalism emphasizes the creation of individuals who struggle to achieve rights and freedom in secular and material terms, Buddhism preaches about the transience of materials and being, and encourages individuals to discard material belongings and worldly comfort in order to achieve spiritual freedom as embodied in the ultimate condition of “nirvana.”

Insofar as the right to privacy is concerned, it is clearly incongruent with the fundamental principles of Buddhism. As earlier argued, the concept of privacy is rooted in liberalism with its emphasis on individualism, natural rights, human dignity, and so forth. By contrast, Buddhist thinking sees the obsession with one’s individual self and one’s possession, material or not, as the root source of suffering. Emancipation, as mentioned above, means disillusionment with and relinquishing of selfhood and worldly desires. Therefore, individuality can be seen as both the beginning and the end to human emancipation in

Buddhism. It must be remembered, however, that the above interpretations are filtered mainly from dogmatic Buddhist teaching which may not necessarily reflect the behavior of relatively secularized Buddhists in contemporary Thai society.

In a final analysis, it is clear that Buddhist philosophy operates on a different level from that of liberalism, upon which the theory of privacy is originally founded. Aside from its modest contribution to promoting rights-oriented political culture, Buddhism also pays little attention to physical freedom, which is a crucial basis for privacy.

“Rights” in the history of Thai political development

While anthropologists and sociologists may linger over Buddhism as the framework for understanding the conception of “rights,” or lack of it, in Thai society, political scientists tend to feel that this is better grasped within the structure of power relations in a given period. Within the political realm, the concept of “rights” has clearly undergone significant changes throughout the extensive history of Thai political development. During Ayutthaya, “rights” was theoretically seen as a privilege and an exclusive entitlement for the king. As divine ruler and proprietor of all rights, the king is in the position to bestow any type of privilege, as he deems fit, to his immediate subordinates — the nobles — who will in turn pass on some of the allocated privileges to those in the lower layers of the social hierarchy. In return, all people — nobles as well as *phrai* — have obligations to serve the

king in their variable capacity — controlling of *phrai*, soldiering, performing corvée labor, and so forth. These obligations are generally known in Thai as *tham ratchakarn* which generally means “doing the work in the service of the king.” This structure of social relations between the king and the rest of society is well illustrated in the *sakdina* system.

According to conservative Thai historians,²⁹ rights and duties that are borne out of the *sakdina* system are the product of harmonious reciprocity between the so-called patrons and clients. In this patronage relationship, people in the lower social groups voluntarily surrender their services for those in the higher social strata out of respect and loyalty, while the more privileged provide them with protection and security. In addition, despite the differences in their social status and duties, all patrons and clients are said to be equal “before the law”. This is explained in the following.

Everyone in Ayutthaya society, whether he be a prince, an aristocrat, or a *phrai*, is considered equal as servant of the king. Under the absolute power of the king, all persons in Ayutthaya society are guaranteed to be uniformly protected and are hence equal before the law. The close-knit relationship and interdependence between classes also made it impossible for people

in each class to be completely isolated from each other.³⁰

According to this view, since equality could be guaranteed and social relations took place in harmony, free of class conflict or contradictions, there was thus no need for people to struggle for rights or freedom in a formal sense.³¹ This visibly positive outlook on Ayutthaya society stems partly from the tendency among some scholars to romanticize the ideas associated with the paternal system of government which Ayutthaya incorporated from Sukhothai (the prior Siamese kingdom) into its autocratic regime. Under such a paternal governing system, the relationship between the state and society of people is sustained by interdependence and compromise, resembling the relationship within a family. In this light, an important collaborative study by Thai scholars from interdisciplinary backgrounds — history, anthropology and political science — concludes that “compromise” is an important framework in understanding the Thai conception of rights especially in the pre-modern period.³² Many of these scholars also attribute to Buddhism as the source of the Siamese’s compromising predisposition, and to the deep-seated patronage system as its perpetuating agent.

This group of scholars also invariably argue that such predilection has enabled the ancient Siamese state to constantly expand its power at the expense of society without provoking significant rebellious outbreaks. On this basis, the *sakdina* system has thrived for several centuries, in effect confining the scope

of social relations within a limited vertical axis of manpower control. Since the majority of the people — the *phrai* — were heavily bound by obligations to the *mun nai* and to the king, it was impossible for them to evolve into free men who would realize that the extent of their “rights” could extend beyond what is “mercifully” bestowed by the more privileged class.

Even after the abolition of corvee and slavery during the Chakkri Reformation in the early twentieth century, nothing has changed much in terms of the ideas about rights in Siamese society. The so-called “transformation of *phrai* into citizens” by Chulalongkorn was at best a strategic move to centralize and stabilize royal power rather than an effort to create a free society of liberal-minded individuals. As a result of the government reform, the scattered locales of power of the *mun nai* were unified under the new and royally-dominated bureaucracy. Most of the former *phrai* became tenant farmers in the rural area and would continue to be subordinate clients to the patronizing bureaucrats in the subsequent decades. In this changing context which was also clouded by fears of colonialism, “rights” began to incorporate new rhetorical dimensions. While the old meaning of “privilege bestowed by the more powerful (*phu yai*) to the less powerful (*phu noi*)” still remained in tact, the conception of “rights” in this period also covered considerations for national survival with an emphasis on collective interests of the nation.

According to a poem composed by Chulalongkorn’s half brother, Prince

Naradhip, who was also a cabinet member and a poet, about "natural rights and freedom of Siamese citizens" in 1928, four basic types of rights were outlined: 1) the right to live without threat from others; 2) the right to earn a living; 3) the right to learn and educate oneself; and 4) the right to help maintain liberty and sovereignty of the nation. The last type of right clearly reflects the influence of the relatively new and modern concept of "nation" on the notion of "rights" as it implies a collective rather than an individual basis like in the West.³³ It also shows how "rights" might have been confused with "duties." Under royal absolutism, the borderline between the two concepts was vague. Although the new peasantry might have been freed from the old bonds of labor indenture, they now entered into a new type of autocratic relationship with the institutions of the absolutist state and were inculcated with a new authoritarian national ideology. This ideology is defined by three major institutions — nation, religion (Buddhism), and king — which are fused together under the idea of Thai-ness. Citizenship in the modernizing Thai (Siamese) nation thus demanded absolute loyalty and obedience to the two key institutions of religion and monarchy. The preoccupation with the above ideology of the absolutist state left little room for the development of individual rights in the realms that are nurtured in the West — civil, political and economic. In addition, without proper institutional locales where the above categories of rights could be defended and advanced, it was too far-fetched for citizenship rights as understood in the West to emerge in Siam at that point in time.

Nevertheless, after the 1932 coup which toppled the absolute monarchy with a democratic government and opened Siam to an era of modern politics, the understanding about citizens' rights in Thai society remained as primitive as before. The best expose about the conception of "rights" in the post-coup period possibly lies in the constitution and several of its subsequent amendments. In the very first constitution which was enacted in the period immediately following the coup, only a few articles addressed matters regarding people's rights and freedom. This was stated under the section on "rights and duties (used interchangeably with freedom) of Thai people" which addressed such topics as freedom of religious worship, freedom in life and property, freedom of speech, freedom of association, and duties towards national law and national security. Notably, there was no stipulation on "rights" per se until the first amendment in 1947 when the right to a fair trial was added to the above section.

A noticeable change manifested in the 1949 version of the amendment when a number of new articles on rights were introduced. According to legal analysts, these changes were a direct influence from the Universal Declaration of Human Rights which was adopted by the United Nations (U.N.) General Assembly in the previous year. The Siamese government had by that time become a member of the U.N. and, although the declaration was not legally binding, the leaders at the time were compelled to support its adoption in the Thai constitution. Apart from incorporating 20

new articles on rights and freedom, frequently by directly translating from the declaration, the Siamese government also published the new articles in the royal gazette and repeatedly disseminated details about them through the radio broadcast of the Public Relations Department.³⁴

Be that as it may, the adoption of new articles which set forth a diverse catalog of rights in the 1949 constitution turned out to be a mere political fulcrum in an effort to impress the local populace and international observers. As time passed, this amended version of the constitution even drew accusations of hypocrisy. As one critic contends, some of the provisions on rights and freedom specified in this amendment only created an illusion of constitutional protection and guarantee, while they were in fact filled with loopholes.³⁵ In such provisions, the constitution will allow for laws, both provisional and organic, to be subsequently enacted which would curb the specified rights, and the exercise thereof, to any extent possible. Therefore, the degree of legal protection for citizen's right or freedom actually depends on the content of future laws and the actual enforcement of constitutional protection.³⁶ In many ways, the 1949 constitution set the course for an interesting paradox in Thai political history. Following this constitutional amendment, Thai politics moved into a more authoritative regime than ever before. The irony is best illustrated by the prolonged rule under oppressive military dictatorship in which even presumably basic human rights were quashed.

To date, the stipulations on rights and freedom in all the Thai constitutions prior to the latest one in 1997 reflect a political orientation which is clearly authoritarian. Instead of focusing on the certification of people's rights and freedom, these constitutional provisions are usually more concerned with the exercise of authority by government officials on matters regarding those rights and freedom. Oftentimes, the provisions will, as mentioned above, open way for organic laws to enable government officials to limit the people's claim. In this light, some legal analysts have argued that the rights and freedom which are stipulated in the Thai constitution are in fact negative rights and freedom. This is because they are by no means natural rights, nor do the people have legitimate ground to defend those rights and freedom without political interference from the state.³⁷

It merits emphasis that the past versions of the Thai constitution have often come under criticisms for their many inherent contradictions. For a fair assessment, these discrepancies ought to be understood within the context in which they were bred. Unlike the U.S. constitution which evolved out of a fervent struggle for freedom from colonial rule, the Thai constitution was imposed upon the people from above by bureaucratic elites who toppled the absolute monarchy. Likewise, it could not possibly carry the objective to limit the power of the ruling group in society as would be the case of the U.S. constitution. Far from being a manifestation of a social contract between the state and the people or among the people themselves, the Thai constitution, as several local ana-

lysts observe, only serves as a synopsis of laws and public policies which facilitate the state power to control the populace. At best, it is merely a reflection of power relations in Thai society rather than a representation of the supreme law of the land.³⁸ One social critic boldly asserts that the actual constitution for Thailand lies in the political culture, since it cannot be drafted, amended, violated, or revoked but is indeed a living reality.³⁹

Conclusion

It is clear from the review above that Thai society may not be a very fertile breeding ground for privacy rights as understood in the West. Nevertheless, recent movements in the political and public policy areas have given rise to greater public awareness about privacy rights, particularly information privacy. For instance, the relatively new Freedom of Official Information Act (2540 B.E.) has a section on the protection of personal data that are contained in government files. This section contains articles that echo data protection principles in laws that have been passed in western countries. It is important to note, however, that the focus of this law is on granting public access to official information, which has been inaccessible in the past, rather than protection of information privacy. Data protection is merely a bonus that comes with this new legal package. In fact, some observers have noted that the section on data protection tends to be overshadowed by the section on access to official information that is the central basis of the law. Meanwhile, there is an ongoing effort by the technocratic National Information

Technology Secretariat Committee (NITC), which is an agency in the Ministry of Science, Technology, and Environment, to draft a data protection law. This is in direct response to penetrative movements by dominant trading blocs like the European Union (EU), which requires that their trading partners have in place data protection laws. However, after more than four years of initial drafting, what would be Thailand's first data protection (information privacy) law had yet to see the light of day. So far, little academic attention has been given to the emergence of this law, not to mention the delay in its enactment. The above review might have shed some light as to why.

Note

¹See, for instance, Priscilla Regan, *Legislating Privacy: Technology, Social Values, and Public Policy* (Chapel Hill: University of North Carolina Press, 1995), 25, and Colin Bennett, "Computers, Personal Data, and Theories of Technology: Comparative Approaches to Privacy Protection in the 1990s," *Science, Technology & Human Values* 16, no. 1 (Winter 1991): 51-69. Regan attributes the root of contemporary theory of privacy to Lockean liberalism, while Bennett alludes to the liberal democratic theory of John Stuart Mill as the basic premise for the same theory.

²Barrington Moore, *Privacy: Studies in Social and Cultural History* (Armonk, NY: M.E. Sharpe, 1984), 271.

³In practice, the right of resistance to an unjust king meant that the people rejected the king, refused further obedience, and elected another. The practice of this right appeared first among the Germanic and Nordic peoples during the period of migra-

tions that followed the collapse of Rome. See Barrington Moore, *Privacy*, 280-1.

⁴The concept of immunity, which derived directly from feudalism, had two major forms. One was the transfer of public authority to persons or groups with the consequence of creating a distinct area of local self-government, as in a fief or a manor. Under an immunity, the household and possessions of an individual or a group became exempt from the fiscal, military and judicial powers normally exercised by the holder of a public office that had authority over the territory. The other major form of immunity took the form of a granting of special powers to the towns, which became a special legal and administrative area separated from the remaining territorial jurisdiction of the exterior authority. Both forms of immunity reflect decentralization and even social fragmentation., *ibid.*, 282.

⁵John Keane, "Remembering the dead: civil society and the state from Hobbes to Marx and beyond," in *Democracy and Civil Society: on the Predicaments of European Socialism, the Prospects for Democracy, and the Problem of Controlling Social and Political Power* (London: Verso, 1988), 34.

⁶C.B. Macpherson, *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973), 24-25.

⁷*ibid.*, 284.

⁸Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1967), 21.

⁹Edward J. Bloustein, "Privacy as an Aspect of Human Dignity — An Answer to Dean Prosser," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman (Cambridge, Cambridge University Press, 1984), 158 (first printed in 1964).

¹⁰Carl J. Friedrich, "Secrecy versus Privacy: The Democratic Dilemma," in *Privacy*, Nomose Series 13 Yearbook of the

American Society for Political and Legal Philosophy, eds. J. Roland Pennock and John W. Chapman (New York: Atherton Press, 1971), p. vii.

¹¹Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1967), 24.

¹²Barrington Moore, "Privacy," 59.

¹³Robert F. Murphy, "Social Distance and the Veil," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 49. (first published in *American Anthropologist* 66, no. 6 (1964): 1257-1274) In this article, Murphy studies the use of a veil among a Mediterranean tribe called the Tuareg. He argues that the veil functions as a maker of symbolic distance enabling a Tuareg person to maintain a diffuse and generalized kind of distance between himself and those who surround him socially and physically. He also argues that social distance pervades all social relationships though, it may be found in varying degrees in different relationships in different societies.

¹⁴In his extensive anthropological study of privacy, Moore asserts that there indeed exists a human society without privacy, in the physiological sense. He points to the case of the Siriono Indians in Bolivia, among whom all physiological activities can and do occur in the presence of other people. However, he also notes that a closer examination reveals that a desire for privacy does exist in the Siriono society. While noting that a desire for (physiological) privacy may be a panhuman trait, Moore also observes that such a desire can be easily controlled or extinguished.

¹⁵Moore was emphatic about distinguishing "formal" versus "informal" means for individuals to protect themselves against arbitrary interference by authorities. In addition to the workings of the family patron-

age system, there were at least two other informal defenses of the individual against the government in ancient China. One was bribery and the other was distance from the arms of authority. Before the advent of new communication and transportation technologies, it took an enormous amount of time for information to reach the central government and for it to react. In this way, the mass of the population was able to set some bounds to their autonomy from the state.

¹⁶See for example, James E. Katz, "Telecommunications and Computers: Whither Privacy Policy?," *Social Science and Public Policy* 25, no. 1 (November/December 1987): 81-86.

¹⁷Robert S. Fortner, "Physics and metaphysics in an information age: Privacy, dignity and identity," *Communication* 9 (1986): 151-172.

¹⁸Ferdinand D. Schoeman, "Privacy: Philosophical Dimensions of the Literature," in *Philosophical Dimensions of Privacy: An Anthology* (Cambridge, Cambridge University Press, 1984), 158 (first printed in 1964), 8.

¹⁹David Lyon, "Privacy, Power, Persons," in *The Electronic Eye: the Rise of Surveillance Society* (Minneapolis: University of Minnesota Press, 1994), 185.

²⁰This can be concretely illustrated by the evolution of western political and social institutions in the tradition of ancient Greece, English Protestantism and common law traditions, and American constitutionalism and property concepts.

²¹Colin Bennett, "Computers, Personal Data, and Theories of Technology," 60.

²²In this theory of possessive individualism, Macpherson describes how Thomas Hobbes, one of the original political theorists who laid the philosophical foundation

of modern Anglo-Saxon liberal democracy, discards the traditional concepts of society, justice and natural law and instead deduces political rights from the atomized interest and will of disassociated individuals. See more in C.B. Macpherson, *The Theory of Possessive Individualism. Hobbes to Locke* (Oxford: Clarendon Press, 1962).

²³See more in James A. Rule, *The Politics of Privacy: Planning for Personal Data Systems as Powerful Technologies* (New York: Elsevier, 1980), 22.

²⁴David Lyon and Elia Zureik, "Surveillance, Privacy, and the New Technology," in *Computers, Surveillance and Privacy* (Minneapolis: University of Minnesota Press, 1996), 16.

²⁵Dr. Nithi Aeusriwongse, professor of Anthropology and Sociology, Chiang Mai University, interview by author, 13 October 1996, Chiang University, Chiang Mai.

²⁶Thanet Apornsuwan, "Rights in the Thai States," in *Imagine the Year 2000: Innovation of Paradigm in Thai Studies?*, ed. Chaiwat Satha-anand (Bangkok: Thailand Research Fund, 1996), 186.

²⁷Suwanna Satha-anand, "Regarding Buddhism and Human Rights," (*wa duay putta sassana kab sithi manussayachon*) in *Views in Eastern Philosophy (manussaya that nai pratchaya tawan ok)* (Bangkok: Chulalongkorn University Press, 1990), 120.

²⁸Thanet Apornsuwan, "Rights in the Thai States," 223.

²⁹Prominent among this early group of historians are Prince Damrongrajaprapha, who is better known as the father of Thai historical study, and M.R.. Kukrij Pramroj, also a member of the royal family, a former prime minister and a renowned statesman. Because of their royal lineage and aristocratic background, their historical accounts tend to carry

a bias in favor of the ruling class.

³⁰M.R. Kukrij Pramroj, "The Ayutthaya Society," (*sangkhom samai ayutthaya*) in *History and Politics: a Supplemental Reading for the Subject of Thai Civilization* (*prawatsart lae karnmuang nangseu aan prakob wicha araya tham thai*) (Bangkok: Thammasart University Press, 1973), 51.

³¹It should be emphasized that while there was no open confrontation or struggle for rights in the formal sense, the *phrai* who constitute the majority of people during Ayutthaya often resorted to informal avenues to protect themselves against arbitrary interference by state authority. Important informal defenses against the state include bribery, maintaining of distance from state officials and through maneuvering through loopholes of the patronage system.

³²Report of the Working Conference on the Project to Develop Human Rights in Thailand," *Newsletter on Thai Studies* 1, no. 5-6 (December 1983): 8 - 27.

³³"Nation or "*chat* " in Thai conveyed quite powerful conceptualizations about the new absolutist state. Although the word "*chat* " was previously used to convey the idea of birth, race, or ethnic identity, it was converted, roughly in the last decade of the nineteenth century, to express the idea of a "nation", a population enclosed within a given territory and owing political allegiance to a common authority. This semantic shift reflected a significant change in the relationship of king and people. Under *sakdina*, the Crown dealt directly with the *mun nai* and only indirectly through the *nai* with the rest of the population. But during the Chakkri Reformation the monarchy was brought closer to the population through various ritual and ideological means. As part of this great reform, the notion of "nation" (*chat*) is defined as a single community through the shared relationship between the king and the people. See more in Pasook

and Baker, *Thailand*, 233-235.

³⁴Pridi Bhanomyong, "Democracy and Fundamentals of the Constitution: the Drafting Process," (*pracha thippatai lae rattathammanun beung ton kab karn rang rattathammanun*) in *The Democratic Thoughts of Pridi Bhanomyong* (*naew khwam khid prachathippatai khong pridi phanomyong*) (Bangkok: Pridi Bhanomyong's Foundation and the 60th Year Democracy Project, 1992), 139 as quoted in Thanet Apornsuwan, "Rights in the Thai State," 210.

³⁵Borvornsak Uwanno, *Law and the Alternatives for Thai Society* (*kot mai kab thang leuk sang khom thai*) (Bangkok: Nititham Press, 1993), 43, 63.

³⁶The only type of right or freedom which was fully protected and guaranteed in this constitution is the freedom to religious worship. The provision on this topic prohibits the legislature from passing any future laws that would bridle a person's freedom to religion. This exceptional provision is usually attributed to the long-standing tradition in Thai culture to be relatively open to other religious beliefs.

³⁷Thanet Apornsuwan, "Rights in the Thai State," 209.

³⁸Saneh Chamarik, *Thai Politics and the Development of the Constitution* (*karn muang thai lae phattanakarn rattathammanun*) (Bangkok: Thai Studies Institute, Thammasart University, 1986), k.

³⁹Nidhi Aeusrivongse, "Constitution: the Cultural Edition," (*rattathammanun chabab watthanatham*) in *Chat thai muang thai baeb rian lae anusawaree* (Bangkok: Matichon Press, 1995), 136, 138.