

Privacy in Perspective:
Situated Living Experiences of Privacy in Canada and Japan

Kodiak Cheung

Thesis submitted in partial fulfilment of the requirements for the degree
of Bachelor of Arts, Honours in Criminology

Criminology Department
Faculty of Arts
Kwantlen Polytechnic University

June 2024

Abstract:

This research looks at the various ways an individual engages with privacy regimes in modern society. Highlighting, through the use of interviews, eight different participants lived experiences of privacy within three different groups in society, students in Canada, students in Japan, and professionals in the field of privacy. There exists almost no literature that looks in-depth at individual's lived experiences with privacy from a grass roots perspective. This research contributes to the existence of this kind of literature. When it comes to understanding lived experiences with privacy, and the ways one engages with technology, some aspects of modern society transcend individuals' prior understanding of privacy. There exists collective concern regarding how individuals' data is collected, and used, in modern society. Drawing attention to the need for further education and change to take place in the field of privacy.

Key Words: privacy regimes, lived experiences, grass roots perspective,

Acknowledgements

First of all, I would like to thank my thesis supervisor, Mike Larsen, for his support and guidance throughout this research. His knowledge and expertise in the field of privacy allowed me to learn and grow further than I previously thought possible, I am honoured and thankful to have had him as a mentor.

Second, I would like to thank my honors thesis committee readers, Dan Lett, and Justin Stein, for taking the time to engage with my research and provide thoughtful feedback and suggestions, in order to allow me to produce this research to the best of my ability.

I would like to further give thanks to my honours colleagues. Each person involved in this seminar undertook, and completed, research that they were passionate about. You all should be proud of what you have done. Congratulations on the completion of your research!

Finally, I would like to thank my family and friends for supporting me when I had questions, and for always unconditionally believing in my ability.

Thesis Committee:

Mike Larsen, Criminology Department, Kwantlen Polytechnic University (Supervisor)

Dan Lett, Associate Dean for Faculty of Arts, Kwantlen Polytechnic University (Internal Reader)

Justin Stein, Asian Studies Department, Kwantlen Polytechnic University (External Reader)

Table of Contents

Section	Page
1- Introduction	4
2- Rationale, Methods, and Key Concepts	9
3- What is Privacy?	14
4- Making Sense of Privacy	16
5- Data Collection	34
6- What does this mean in the context of this research question?	51
7- Thoughts of My Own	53

Appendices	Page
A-1: Definitions of Privacy in Law	58
A-2: Japan General Union definition of privacy	59
B-1: Japan Ordinance defined	60
B-2: Japan Ordinances further defined	61
C: Interview Guide	62

Introduction:

In today's society, technology is advancing at a rapid rate, giving an individual the opportunity to engage with private companies like Apple, which are creating new technologies that are marketed in a way that encourages individualism and expression. The Apple watch can assist with your everyday tasks such as making phone calls from your new iPhone, tracking your footsteps, and measuring your heartbeat these all seem like standard Apple watch features. These features exist for the sole purpose of collecting your data so that it can be sold to other companies. It is not just Apple that collects and sells your data in today's society but a multitude of different companies in 2023, out of twenty-five different car brands researched, 84 percent of them sell or share the data they collect from you with others. The popular car brand Nissan has a privacy policy that states that they can collect data from their users such as philosophical beliefs, or sexual activity and then they can prevent you from having it deleted, stating that they sell data inferences about their users to create data profiles of that individual.¹ Grocery store company Target was able to determine a woman's pregnancy date, without knowing anything more than her shopping habits.² Phones that use the Android-based operating system come pre-installed with Google applications so that the search engine company can collect as much data as possible. These kinds of occurrences are critical to take note of as they highlight the importance of this research on privacy. Privacy can be defined as the freedom to be yourself, allowing one to grow and learn, being free from judgement. It is only when privacy is eroded by those wanting to hold power and control over other people, that this fails to take place, resulting in individuals thinking they have no privacy, and in turn no freedom.³

Recently, the topic of privacy has been consistently associated with an individual's identity, resulting in the intersection of the topic of surveillance, and the topic of privacy, to take place. The intersection of these topics causes an individual to associate surveillance and privacy, with ideas related to notions of security and protection. Central to note is that different places in the world when it comes to addressing these topics, do so differently placing more emphasis on one point, in place of another. Using Canada and Japan as an example, the way that topics related to privacy are regulated, and in turn are understood in Canada, is different than from Japan. These different cultural viewpoints and understandings in regard to privacy are important to highlight, as there exists a rich sociological history of work written that draws attention to different cultural understandings and their significance to one's lived experiences. This research adds to the field of existing sociological writing, by looking at lived experiences of privacy from a modern context.

The objective of this research is to demonstrate how the privacy regime of British Columbia Canada, compares to the privacy regime in Japan, and how differences in these regimes relate to the way that individuals in both jurisdictions perceive and experience privacy in their

¹ Mozilla Foundation. (2023). *Nissan*. Accessed April 3rd, 2024 from: <https://foundation.mozilla.org/en/privacynotincluded/nissan/>

² Hill, K. (2012). How Target Figured Out A Teen Girl Was Pregnant Before Her Father Did. *Forbes*. Accessed April 3rd, 2024 from: <https://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/?sh=78ab9f396668>

³ Eichhorn, K. (2019). *The end of forgetting: Growing up with social media*. Harvard University Press.

lives. The first section of this paper addresses privacy and surveillance, looking at the way in which these concepts historically intersect with one another in both a Japanese and Canadian context.

The second section of this paper draws attention to the rationale for undertaking this research, the methodology used, and finally key terms that are important for an individual to understand, when approaching ideas related to privacy, surveillance, and control. The third section of this paper addresses the concept of privacy from a general standpoint, demonstrating cultural differences between both Canada and Japan. The fourth section of this paper, goes into detail regarding the concept of privacy, highlighting the way privacy is used in law, the way privacy was previously understood, how it is currently understood, the approach one needs to take to understand privacy in a similar sense, and finally, potential gaps within the existing literature engaged with, allowing one to make sense of privacy and the way in which it functions in the modern context. The fifth section of this paper engages with data collected, addressing individuals, perceptions of privacy, values towards privacy, notions of power in relation to privacy, and the need for change in relation to the concept of privacy. The sixth section of this paper brings to light how all of these prior sections intersect with the research question posed, and finally the seventh section provides my own thoughts on the topic of privacy, in relation to these understandings.

Central to this research paper, is a literature review on the topic of privacy. This project could have been conducted through the use of a legal analysis without the inclusion of this review, however, in order to situate this research with the existing prior theoretical, and conceptual backgrounds of the topic, it became clear that multiple perspectives needed to be taken, and understood, towards the concept of privacy in order to properly contribute to the current existing field.

Privacy studies and surveillance studies have emerged as their own distinct fields,⁴ both intersecting with criminology and socio-legal studies, in relation to research on security and control. These fields have adapted and evolved over time, as a result of changes made to law, technology, and shifts in economics, politics, and culture. Michel Foucault in 1975⁵ drew connections between the way power functions, and the mechanisms that were used to regulate the observation and assessment of populations. From the perspective of Foucault, disciplinary power works as a result of subjects internalizing their own visibility in a way that results in these individuals complying with existing rules and norms, while various contemporary scholars such as Bauman, Lyon, and Harcourt, highlight the continued applicability of Foucault's 'panoptic' model of surveillance. Presenting the idea, that social control functions through the use of different mechanisms that make individuals and groups visible with, or without, their knowledge, or consent, remaining an important concept in today's society.

⁴ Marwick, A. (2022). Privacy without power: What privacy research can learn from surveillance studies. *Surveillance & Society* 20(4): 397-405: <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/16009/10519>

⁵ Foucault, M., & Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Pantheon Books.

Haggerty and Ericson argue that “Humans are born free and are immediately electronically monitored.”⁶ Arguing that even from infancy an individual does not have privacy, this idea is related to the concept of visibility, meaning that once an individual is born they are subject to the internalized of rules and norms.

The attacks of September 11th, 2001, resulted in a massive global shift in North America around surveillance law, causing other countries to react to the changing of surveillance laws, having a ripple effect to the field of privacy, shifting an individual’s reasonable expectations of privacy based on the Canadian Charter of Rights and Freedoms. After this attack, Canada in October of 2001 introduced Bill C-36⁷ which amended several different acts such as “An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism.”⁸

Calivita⁹ presented the idea that laws are not enforced equally and used as a form of control over the lower class. In the same year, Nippert-Eng¹⁰ produces a book titled ‘Islands of Privacy’ that addresses lived experiences of privacy this book is the inspiration for this research.

Bauman and Lyon¹¹ addressed how the conversation around privacy and security has shifted from something that was previously physical to something that is now liquid and malleable. This transition from physical to liquid is important to take note of because it means that data can be collected about individuals that was not previously possible, as a result of the shift from physical data retention to digital data retention.

Harcourt¹² talked about the way in which individuals desire engagement with others and with technology.

Lyon et al¹³ drew to attention the way individuals are surveilled in Canada. In the same year, Keenan¹⁴ demonstrates various practices used by others to surveil individuals.

⁶ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

⁷ Senate of Canada. (2001). *Proceedings of the Special Senate Committee on the Subject Matter of Bill C-36*. Accessed April 3rd, 2024 from: <https://sencanada.ca/en/Content/Sen/committee/371/sm36/01evb-e#:~:text=The%20bill%20includes%20the%20following,deal%20with%20discrimination%20and%20hatred.>

⁸ Government of Canada. (2024). *About the Anti-terrorism Act*. Accessed April 2nd, 2024, from: <https://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html#:~:text=On%20October%2015%2C%202001%2C%20ATA,order%20to%20combat%20terrorism.%22%20.>

⁹ Calavita, K. (2010). *Invitation to law & society: An introduction to the study of real law*. University of Chicago Press, 101.

¹⁰ Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press.

¹¹ Bauman, Z., & Lyon, D. (2013). *Liquid surveillance: A conversation*. Polity Press.

¹² Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

¹³ Lyon, D., Bennett, C. J., Steeves, V. M., & Haggerty, K. D. (Eds.). (2014). *Transparent lives: Surveillance in Canada*. AU Press.

¹⁴ Keenan, T. P. (2014). *Technocreep: The surrender of privacy and the capitalization of intimacy*. Greystone Books.

Mizutani Masahiko et al. argue contrast to Canada that within Eastern Asia “details of privacy conventions are sometimes strikingly different from Western cultures.”¹⁵ These authors argue these differences are deeply rooted in Japanese culture and society as a result of influences from traditional culture, such as Buddhism, and the early modern agricultural society of Japan. Mizutani et al. cite examples such as the Buddhist ideology of needing to efface the self for liberation as well as learning to accept one’s place in Japanese hierarchical society rather than fighting against the state. They state that “the difference between an individual orientation in America and a group orientation in Japan is undeniable. Because privacy is sometimes closely associated with individualism, a culture like Japan that places less emphasis on individualism may appear to be less concerned about privacy and have fewer privacy customs.”¹⁶

Yohko Orito and Kiyoshi Murata¹⁷ however argue that this lack of privacy concerns mentioned above is not the case, they demonstrated that Japan enacted the Act on Protection of Personal Information whose intended use was to, “protect personal information collected, stored, distributed, and used by both public and private organizations.”¹⁸ This enactment was a big change in Japanese privacy law as previously Japan enacted a version of this act in 2003 that only applied to business operators, not the public. Thus, demonstrating that though there is a difference in the way individual orientation, and group orientation, take place in America and Japan there is still concern over one’s privacy rights in Japan.

¹⁵ Mizutani, M., Dorsey, J., & Moor, J. H. (2004). The internet and Japanese conception of privacy. *Ethics and Information Technology*; Dordrecht, Vol.6(Iss. 2), 121–128.

¹⁶ Mizutani, M., Dorsey, J., & Moor, J. H. (2004). The internet and Japanese conception of privacy. *Ethics and Information Technology*; Dordrecht, Vol.6(Iss. 2), 121–128.

¹⁷ Orito, Y., & Murata, K. (2008). Socio - cultural analysis of personal information leakage in Japan. *Journal of Information, Communication and Ethics in Society*, 6(2), 161–171.
<https://doi.org/10.1108/14779960810888365>

¹⁸ Orito, Y., & Murata, K. (2008). Socio - cultural analysis of personal information leakage in Japan. *Journal of Information, Communication and Ethics in Society*, 6(2), 161–171.
<https://doi.org/10.1108/14779960810888365>



19

Figure:1

Ishii and Komukai²⁰ undertook a comparative legal study to ensure that Japan's data policies are up to date. Where Higashizawa²¹ addressed the way that big data, or metadata, is used in Japan and argue that the current Act on the Protection of Personal Information in Japan needs to be amended.

Deflem²² argues the way in which an individual's privacy in today's society can be used as a form of social control. The same year the case *Hunter v Southam*²³ set the precedent for cases involving section eight of the Canadian Charter of Rights and Freedoms.²⁴ Zuboff²⁵ presents the idea of 'surveillance capitalism' demonstrating how companies benefit from individuals' data.

¹⁹ This figure refers to the idea that what is posted on social media is often viewed by those who an individual is aware of, and those who an individual is not unaware, of both viewing the same photo

²⁰ Ishii, K., & Komukai, T. (2016). A Comparative Legal Study on Data Breaches in Japan, the U.S., and the U.K. In D. Kreps, G. Fletcher, & M. Griffiths (Eds.), *Technology and Intimacy: Choice or Coercion* (Vol. 474, pp. 86–105). Springer International Publishing. https://doi.org/10.1007/978-3-319-44805-3_8

²¹ Higashizawa, N., & Aihara, Yuri. (2017). Data Privacy Protection of Personal Information Versus Usage of Big Data: Introduction of the Recent Amendment to the Act on the Protection of Personal Information (Japan). *Defense Counsel Journal*, Vol. 84,(Iss. 4.), 1–15.

²² Deflem, M. (2019). *The handbook of social control*. John Wiley & Sons.

²³ *Hunter et al. v. Southam Inc.* 1984. SCC [1984] 2 SCR 145. Accessed April 3rd, 2024, from: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5274/index.do>

²⁴ Government of Canada. (2024). *Section 8 – Search and seizure*. Accessed April 3rd, 2024, from: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art8.html>

²⁵ Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power* (First edition). PublicAffairs.

In Japan, Ye and Ho²⁶ conduct a study that demonstrates Japanese University student's engagement with Privacy.

Daschuk et al²⁷ highlighted the way in which the critical perspective can be applied to social control and social regulation within Canada. Doctorow²⁸ releases a book that talks about how surveillance capitalism can be destroyed and how society can continue forward.

Hiroshi and Miyashita²⁹ highlight that although Japan is adapting their privacy laws to respond to the changing society there are still adaptations and revisions that need to take place. Using the 2016 General Data Protection and Regulation Act as an example to highlight the kinds of revisions that need to exist, stating that in Europe, "an individual has the right to obtain knowledge of the reasoning that underlies data processing where the results of such processing are applied to them (Art. 9 (1)c). No similar right is provided under the Japanese Act on the Protection of Personal Information."³⁰

Rationale, Methods, and Key Concepts:

The rationale and purpose for conducting this research started from my interest in both the topic of Japan and the topic of privacy within Canada. To provide context, previously, I took a Crime and Media course at Kwantlen Polytechnic University taught by Professor Larsen in 2019 that focused on the impact of one's digital privacy in modern society and became very interested in the conception of privacy and how information was collected and used in today's society. Having taken this course, coupled with the fact that I vigorously studied Japanese at Kwantlen Polytechnic University, I formulated a research project that encompassed both my passion for digital privacy and my passion for Japanese.

The main research question that this research is concerned with is looking at how the privacy regime of British Columbia Canada, compares to the privacy regime in Japan, and how differences in these regimes relate to the way that individuals in both jurisdictions perceive and experience privacy in their lives. This kind of research is important to conduct as looking at the lived experiences of privacy allows an individual a first-hand understanding of the ways in which someone interacts with privacy in their daily lives. It is worthwhile to consider that Canada is a multicultural country because of this, the way an individual understands and interacts with privacy in their daily life may be different from one person to another person also living in Canada. Therefore, in order to properly be able to understand lived experiences of privacy, it is important

²⁶ Ye, S., & Ho, K. K. W. (2019). Would you feel happier if you have more protection behaviour? A panel survey of university students in Japan. *Behaviour & Information Technology*, 38(4), 422–434. <https://doi.org/10.1080/0144929X.2018.1544275>

²⁷ Daschuk, M., Brooks, C., & Popham, J. (2020). *Critical perspectives on social control and social regulation in Canada*. Fernwood Publishing.

²⁸ Doctorow, C. (2020). *How to destroy surveillance capitalism* (First edition). Stonesong Digital.

²⁹ Miyashita, H. (2021). Human-centric data protection laws and policies: A lesson from Japan. *Computer Law & Security Review*, 40, 105487. <https://doi.org/10.1016/j.clsr.2020.105487>

³⁰ Miyashita, H. (2021). Human-centric data protection laws and policies: A lesson from Japan. *Computer Law & Security Review*, 40, 105487. <https://doi.org/10.1016/j.clsr.2020.105487>

to consider the cultural context of the person being looked at, as this context may shape the way in which they understand privacy.

As Marwick argues, drawing attention to the fact that the conversation about privacy and surveillance has remained focused on the individual regarding violations and solutions.³¹ Marwick, however, quotes Julie Cohen who argues that ““human beings and human societies are constituted by webs of cultural and [material] connections.””³² The research within this paper takes a similar approach, using legal documents and interviews with both professionals and students, to understand the way that the topic of privacy intersects with the many webs of human cultural connection. As human societies are made up of various different cultural connections, different perspectives can be taken towards privacy and this research. In other words, there is a need for further research to take place, in order to understand privacy from a sociological standpoint.

When engaging with literature on the topics of privacy and surveillance for this research paper, it came to my attention that various scholars were presenting theories related to privacy about those living in Japan that did not align with what takes place within Japanese society or is understood to be taking place after one studies different topics related to Japanese society. This concept is referred to as “日本人論” or Nihonjinron, theories of the Japanese people, a genre of various articles and books that attempt to explain various aspects of Japanese national and cultural identity. After realizing this, the purpose of conducting this research in addition to performing a comparative analysis of lived experiences, was to demystify arguments around privacy in Japan³³ and Canada, highlighting that in Canada, one's privacy within society is not 'dead' as some professionals may refer to it, and instead up for the taking. Thus, drawing attention to the various ways that those living in Japan and Canada perceive and engage with, privacy regimes, a collective body that regulates all aspects of privacy.

This research is informed by a diverse mix of classical, and contemporary, scholarship that collectively presents a critical stance in relation to surveillance and privacy. It is concerned with the way in which intrusions on privacy limit an individual's collective freedom, commodify one's personal information, and organize forms of social control that recreate hierarchies. This approach will be considered by others reading my research as, a common approach to the topic of privacy that adds to the rich tradition of already existing critical scholarship on the topic as it demonstrates the way in which the concept of privacy, intersects with individuals' lived experiences. This stance was chosen as “[t]heory is used to attempt to explain underlying structures that influence

³¹ Marwick, A. (2022). Privacy without power: What privacy research can learn from surveillance studies. *Surveillance & Society* 20(4): 397-405: <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/16009/10519>

³² Cohen, Julie E. 2012. *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice*. New Haven, CT: Yale University Press

³³ I wanted to focus on the Kantou region of Japan because that is where the Personal Information Protection Commission of Japan is located, however, I was unable to find participants from that area who were interested in my research. Further, because this research was interested in looking at Japanese university student's perspectives of privacy. This resulted in me instead changing my focus to Japan as a whole, rather than one specific area for this project. However, I do believe that further research is needed to deduce if this research is applicable to the greater population of Japan.

phenomena.”³⁴ Applying this idea to this research and understanding of the critical paradigm, taking this kind of stance allows the explanation of how individuals are influenced by, and engage with, the current regime in power.

This research highlights existing differences within privacy regimes on a social level, performing a comparative legal analysis, and demonstrating how privacy regimes in both areas relate to an individual’s culture, as in North America the way in which an individual engages with their culture determines what values one has towards privacy. This is why there is significance in looking at lived experiences of privacy, rather than focusing on how privacy laws have been broken by criminals in today’s society and developing preventative strategies where one can combat these challenges, as by doing so, one can bridge the gap between law in theory, and law in practice, addressing privacy matters as a matter specific to one’s own lived experiences, rather than from a matter of judgement. Marwick highlights, “the public conversation around privacy often ignores its complexity and the collective nature of the problem, instead focusing on individual harms and solutions.”³⁵ This research draws attention to the existing complexity within privacy and the importance of approaching the topic from this standpoint.

Jacobson and Mustafa highlight that our, “social positions influence how we approach, investigate, and analyze data; [they determine] the lens through which we see the world.”³⁶ To ensure that the positionality taken when performing this research can be fully understood by others, throughout this research project there exists the inclusion of both personal reflexivity and functional reflexivity. Including both these kinds of reflexivity ensures that those who read this research, are able to have a clear understanding of the logical processes that were used, and how decisions were made throughout each part of this research.

As of right now, engaging with personal reflexivity in this project, the fact that I come from a middle-class background with prior knowledge of both Criminology and an understanding of Japanese society, has affected my research. This is because while some of the database resources, information learned, and experiences, I have had access to while undertaking this research, others who are in a lower-class status may not have had access to. These are experiences such as the various databases my articles are drawn from, the conversations with experts on the topic, or the various exchange programs engaged with additionally, because my father was vice president of the Pacific Region for the union Unifor for several years, my understanding of how government processes work is different from most. Taking this point into account, I am aware that I take a hierarchical perspective and stance towards governmental processes. Moreover, I am cognizant that previously I held mystified ideas regarding concepts related to Japan this is because I am not of Japanese descent, I am just an individual of Chinese and European descent who has an interest

³⁴ Kirby, S. L., Greaves, L., & Reid, C. (2017). *Experience, research, social change: Critical methods* (Third edition). University of Toronto Press, 12.

³⁵ Marwick, A. (2022). Privacy without power: What privacy research can learn from surveillance studies. *Surveillance & Society* 20(4): 397-405: <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/16009/10519>

³⁶ Jacobson, D., & Mustafa, N. (2019). Social Identity Map: A Reflexivity Tool for Practicing Explicit Positionality in Critical Qualitative Research. *International Journal of Qualitative Methods*, 18, 160940691987007. <https://doi.org/10.1177/1609406919870075>

in these topics. This is not to say that I believe that those who are Japanese do not hold mystified ideas about Canada or Japan, just that I specifically am not of Japanese descent.

Engaging with functional reflexivity, these specific books, and articles were included, as they provide a good basis for one to be able to introduce the importance of privacy within today's society. Once an individual has a good understanding of the literature included, this allows, one to be able to transition into a more specified version of the privacy argument once they have an overview of the topic.

In regard to coding, this research uses a two-step coding process, providing a good foundation to break apart the vast amount of information collected and organize it in a way that allows it to be categorized into main points and secondary points that are not the main focus of this research but still key to take note of, demonstrating the ways in which privacy is understood in today's society.

Regarding interview questions, the questions used were formatted in a way in which the topic, transitioned from generalized questions to specific questions, starting off with general throw-away questions such as the participants title and prior research on the topic, to more advanced questions that address the participant's beliefs, and what they deem to be most important for members of the public to understand regarding privacy. The interview questions were formed this way because it allowed the interviews to start from a general understanding of an individual's conceptions of privacy, and then continue in a way that allowed access to conceptions one had regarding specific privacy issues.

Policy documents were included because, understanding the way in which privacy laws work in both Canada, and Japan, provides the reader with a clear understanding of one's individual engagement with privacy, specifically, what rights an individual currently has in regard to privacy in both places, and how that same individual engages with these policies within their daily lives.

Students that participated in this research, were recruited out of convenience, some were individuals who were contacted through others, and some reached out on their own accord. Regarding the professionals, who participated in this research, each interview provides various different perspectives towards the concept of privacy.

Samantha Delechantos practiced law in three different areas and stated that this provided her an in-depth understanding of the way privacy is understood from a legal standpoint.

Colin Bennett is an expert when it comes to privacy and privacy policy, having extensively engaged with the topic for a number of years. Having him as part of this research includes the viewpoint of an individual who has thought about this topic for years.

Meghan McDermott is also a lawyer, and the current policy director for the British Columbia Civil Liberties Association having her viewpoint allows those reading this research to understand the perspective of an individual who is currently engaged in writing and advocating for privacy policy.

Finally, Joyce Yan, is the Access & Privacy Manager at the College of Physicians and Surgeons of BC including her perspective an individual's perspective that is outside of my research focus, highlights to those reading this research, the ways in which privacy is engaged with by other disciplines.

In summary, within society, historically, privacy has been connected to ideas around power, control, agency, and security. Power and technology have had and continue to have, a profound impact on an individual's collective privacy rights simply telling someone to 'be more informed' about privacy and to make better decisions is not effective, and it may be more paralyzing or cause someone to despair. There is great value in the kind of research that attempts to bridge the gap between one's lived experience with privacy and how that experience is shaped by interactions with, laws, structures, and institutions. For this reason, in addition to the fact that I have looked at how privacy has been conceptualized in law and theory, the ways that privacy has been affected by social, political, and technological trends, and how privacy is used in terms of power relations and how individuals engage with it daily, as well as having an understanding of Japanese culture and first-hand experiences with privacy regimes in Canada, I am well-suited person to undertake this research.

This research contributes to additional understandings of privacy, because not only is there a comparison of privacy regimes, but this research also addresses how these regimes shape individuals' lives. There is the existence of potential cultural reduction as a result of undertaking this research, however, to clarify, this research is not stating that from either a Canadian or a Japanese perspective, one perspective is better than the other, this research is only interested in comparing the lived experiences of these individuals in two different areas of the world. This research will help individuals understand how privacy is understood in today's society, and as Deibert states, "encourages [one] to question the technologies that [an individual] depend[s] on, that [one] carr[ies] with [them] wherever [they] go."³⁷

The theoretical perspectives used in this research were both Critical Criminology theory, and Conflict theory, as well as the theoretical perspective and understanding of both the panopticon and synopticon, in relation to forms of power as highlighted by Foucault, ultimately becoming what Harcourt refers to as the mirrored glass pavilion³⁸. The foundation of these main theoretical perspectives stems from the German sociologist Karl Marx and his understanding of social and economic institutions as tools that are used to ensure the dominance of the ruling class. Leman-Langlois argues that "Technosurveillance resembles what Gary Marx (2016) refers to as the 'new surveillance,' although it is no longer new"³⁹ This conception of the fact that new surveillance has now become present surveillance in an age where one's information is mostly collected by private institutions, encouraged these stances towards this research. This is because the term

³⁷ Ron Deibert Professor of Political Science and Director of the Citizen Lab at the University of Toronto in Cory Doctorow's book *Attack Surface*, page 373.

³⁸ Harcourt, B. E. (2015). *Exposed: Desire and disobedience in the digital age*. Harvard University Press.

³⁹ Leman-Langlois, S. (2019). Technologies of Surveillance. In M. Deflem (Ed.) *The Handbook of Social Control*, pp. 349-360. Oxford: Wiley Blackwell.

‘Technosurveillance’ refers to the way new technologies in society, allow individuals the ability to surveil others in a way that transcends prior held understandings of the concept of surveillance.

The paradigm used for this research was a Critical Criminology research paradigm, which informed this research’s data collection, as it shaped the kinds of interview questions, posed in order to obtain responses that reflected the chosen paradigm.

The research undertaken contributes to Canadian law and policy around the topic of privacy because the application of these privacy laws, and varying perspectives that those in both societies have on privacy, between the two countries vastly differ. Ye and Ho argue that “Japanese youth rely heavily on mobile devices like smartphones to establish their social connections with other people.”⁴⁰ When made aware of privacy issues when Japanese youth started taking precautions, they, “started to feel that they were more distant from their friends and perceived a weakened subjective well-being.”⁴¹ This point is key to understand as in Canada, being perceived as weak due to taking precautions around privacy is less likely to take place, and instead encouraged.

Being able to define, and understand, how individuals in Japan engage with technology and conceptualize privacy from a social perspective, influenced my ability to deduce potential solutions to existing privacy problems here in Canada, this research benefits those who have an interest in how privacy is perceived and engaged with, in different areas of the world.

What is Privacy?

General Overview:

Attempting to understand privacy in other parts of the world, it is important to first understand how privacy is understood in Western society. Focusing on Canada, the importance of one’s privacy has become an increasingly prevalent topic in today’s digital age, resulting in individuals relying on various existing Canadian legal privacy policies when they run into a problem. Privacy is conceptualized differently by different laws resulting in privacy perspectives being molded to fit the given law. without one clear definition. This moulding of perspectives results in ‘function creep’.⁴² Law in Canadian society treats privacy as something that is meant to be subject to limitations due to this factor, the historical creation of privacy often goes unaddressed, as privacy is contemplated by members of society as something that already exists, rather than something that came to exist. This is why privacy impact assessments⁴³ in Canada take place after the new technology has been implemented, as Canada conceptualizes privacy as a tool first, and as a concept second.

When one understands notions of privacy from a historical context, in conjunction with understanding that privacy law in Canada is a jurisdictional patchwork of laws, that there is not

⁴⁰ Ye, S., & Ho, K. K. W. (2019). Would you feel happier if you have more protection behaviour? panel survey of university students in japan. *Behaviour & Information Technology*, 38(4), 422-434. <https://doi.org/10.1080/0144929X.2018.1544275>

⁴¹ Ibid.

⁴² Refers to the use of a technology or system beyond the intended purpose for which it was originally intended.

⁴³ Refers to an analysis of how one’s privacy is impacted due to the implementation of new technology

one encompassing privacy policy in place in Canada that protects an individual's right to privacy. This allows an individual to transition their conceptualization of privacy from a macro-level understanding to a micro-level one. Similar to a regime, this patchwork's jurisdiction is not always understood with clarity instead this patchwork's jurisdiction is sometimes understood as one that is ambiguous and unclear. In other words, meaning that though provinces such as British Columbia, or Toronto, have their own versions of provincial privacy laws, these provincial privacy laws work in conjunction with the existing federal privacy laws, such as the Privacy Act of 1996,⁴⁴ the Canadian Personal Information Protection and Electronic Documents Act,⁴⁵ and finally the Canadian Charter of Rights and Freedoms.⁴⁶

Notions of privacy intersect with various statutes and are referred to by other professions through various existing privacy laws, such as the Freedom of Information and Protection of Privacy Act of British Columbia,⁴⁷ and the Personal Information Protection and Electronic Documents Act⁴⁸. This overlap results in various joint investigations taking place in Canada when issues around privacy are brought to attention, meaning that those in Canada have privacy rights that have been extensively defined, and where one privacy act does not apply, the other will, in place of that non-applicable act, ensuring that one's right to privacy in Canada always exists.

Related to lived experiences, this level of protection is critical to highlight as, most individuals do not realize the way their privacy is protected on a daily basis unless faced with a privacy breach. Most are unaware of the various mechanisms that regulate privacy in Canada and only draw upon sections seven and eight in the Canadian Charter in reference to privacy.

Cultural Differences:

In Japan, however, municipal, or prefectural acts, similar to those in Canada do not exist instead, Japan relies on federal acts, such as the Act on the Protection of Personal Information, as well as the Japanese Constitution, to define one's right to privacy in Japan. Important to note, is that though prefectural acts do not exist, Japan does have ordinances. The term ordinances is defined as different from laws, referring to the term 'law' as a law that has been enacted by Japan's

⁴⁴ Privacy Act, RSBC 1996, c 373, <<https://canlii.ca/t/565gt>> as it appeared on March 2024.

⁴⁵ Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <<https://canlii.ca/t/541b8>> as it appeared on March 2024.

⁴⁶ Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. as it appeared on March 2024

⁴⁷ Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165, <<https://canlii.ca/t/566l3>> as it appeared on March 2024.

⁴⁸ Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <<https://canlii.ca/t/541b8>> as it appeared on March 2024.

National Diet,⁴⁹ where as ordinances refer to laws that the federal government in Japan allow to be enacted by the local government in that area.⁵⁰

Privacy in Japan is often referred to in conjunction with the concept of, restraint' (enryo 慮),⁵¹ privacy in Japan is referred to this way because there exists a social norm within Japanese society to not act on what you overhear. In Japan, when you overhear someone else's conversation, the accepted correct course of action is to act as if you had not done so, not addressing the information in any way, shape, or form, no matter what that information is. This example illustrates why it is important to attempt to understand privacy from multiple perspectives, as in Canada this kind of social norm is not as prevalent.

Comparing the privacy regimes of Japan, and Canada, highlights the importance of understanding privacy from various perspectives, as the two regimes function differently: one being a patchwork, and the other applying federally. Thus, it is only through a multi-faceted perspective on privacy that an individual can understand one's lived experience of privacy.

Making Sense of Privacy:

In order to understand privacy, and the way it works in today's society in different places, one needs to understand and be able to compare the laws of each place because of the way that Canada and Japan's laws function differently this comparison can be explained by highlighting which laws an individual needs to engage with, to form a multifaceted perspective of privacy, and jurisdictionally where these laws fall in relation to one's own country. In the case of Canada, one must compare how the laws in Japan, apply to the Canadian public and private sector.

Once this is understood, Foucault⁵² must be kept in mind, as the way power and control historically has functioned, allows one to understand how current society came to exist, resulting in one to engage in modern arguments around privacy, as they understand previous arguments posed. This understanding justifies why the stance taken towards privacy is better than others, as it allows for one to highlight potential gaps in other posed arguments, in order to further understand the topic of privacy.

Legal Codes:

The first step in being able to compare these two privacy regimes is to address the main functions of each of existing privacy acts in both Canada and Japan, so that one can begin to understand the similarities and differences between these acts, demonstrating that though on paper

⁴⁹ Japan's National Legislature

⁵⁰ Foresight. (2021). *What are the regulations? Also explains the difference between laws and regulations!*. Accessed April 10th 2024 from: <https://www.foresight.jp/gyosei/column/ordinance/>

⁵¹ Mizutani, M., Dorsey, J., & Moor, J. H. (2004). The internet and Japanese conception of privacy. *Ethics and Information Technology*, 6(2), 121-128.

⁵² Foucault, M. (1995). *Discipline and punish: The birth of the prison* (2nd Vintage Books ed). Vintage Books.

the laws are similar, in application these laws function differently. In doing so, it is critical to include a section that addresses laws related to privacy regimes.

When defining privacy regimes, one must understand that a privacy regime addresses not one law, but all of the mechanisms involved with the concept of privacy: how privacy is regulated, who's interest is kept regarding the formation of privacy laws, who enacts privacy laws, and ultimately how individuals ultimately engage with them. Additionally, it is important to understand that privacy is used as a tool for social control. Within Canada, privacy is focused on the collection of information within two different sectors, both the public sector and private sector, in modern-day society, many current privacy laws exist to serve the function of personal information protection. These laws are concerned with governing the collection, use, and disclosure of both personal information and information security, meaning that current privacy laws in Canada tend to be legally conceptualized in individual terms, rather than as a collective.

What is key to understand is that privacy is defined differently by each organization, the Canadian Office of the Privacy Commissioner defines privacy as something that, “touches all aspects of our lives and world. Children’s rights, competition, broadcasting, cybersecurity, democratic rights, international trade, national security, equality rights, public health, ethical corporate practices and the rule of law – all of these have important privacy implications and impacts.”⁵³

The Supreme Court of Canada defines privacy under Section 8 of the Charter guaranteeing, “the right to be secure against unreasonable search or seizure”. Its principal object is the protection of privacy, or the individual’s “right to be left alone” (R. v. Edwards, [1996] 1 S.C.R. 128, at para. 67). Personal privacy is vital to individual dignity, autonomy, and personal growth (R. v. Jones, 2017 SCC 60, [2017] 2 S.C.R. 696, at para. 38). Its protection is a basic prerequisite to the flourishing of a free and healthy democracy.”⁵⁴

The Japanese General Union defines privacy by referring to Japan’s Constitution Article 13, which states, “The “right to privacy” for individuals is derived from a general right to the “pursuit of happiness”; a right from which invasions of privacy commonly detract.”⁵⁵

Japan’s Personal Information Protection Commission refers to privacy in relation to Japan’s Act on the Protection of Personal Information ‘APPI’⁵⁶ which states, “The purpose of this Act is to protect the rights and interests of individuals while ensuring the smooth and proper management of the processes or services of administrative entities as well as ensuring due consideration of the value of personal information and the fact that the proper and effective application of personal

⁵³ Office of the Privacy Commissioner of Canada. 2023. *2022-2023 Annual Report to Parliament on the Privacy Act and the Personal Information Protection and Electronic Documents Act*. Accessed April 9th, 2024 from: https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202223/ar_202223/#toc3

⁵⁴ R. v. Bykovets, 2024 SCC 6 (CanLII), <<https://canlii.ca/t/k358f>>, retrieved on 2024-04-09

⁵⁵ General Union. 2016. *A Guide To Privacy Laws In Japan*. Accessed April 9th 2024 from: <https://generalunion.org/4519/#:~:text=We%20can%20start%20with%20the,all%3A%20the%20Constitution%20of%20Japan.&text=Article%2013.>

⁵⁶ Act on the Protection of Personal Information

information contributes to the creation of new industries and the realization of a vibrant economic society and an enriched quality life of the Japanese public.”⁵⁷

Depending on the way an organization defines privacy, their definition of the term determines the way they function within the overall privacy assemblage, which in turn affects the way that individuals engage with privacy on a micro level. For example, the way that the Japanese Constitution defines and regulates privacy, determines the kind of laws that are made, which then affects the way that individuals in Japan, engage with, and understand privacy. Similarly, the way that the Supreme Court of Canada defines, and regulates privacy determines the kind of laws that are formed, which in turn affects how those in Canada engage with and understand privacy. For example, the way that the Supreme Court of Canada defined Internet Protocol (IP) in *R. v. Bykovets*⁵⁸ determines the kind of laws that will be included in upcoming bills such as Bill C-27,⁵⁹ which in turn affects the way that individuals navigate and understand their privacy rights.

Due to the fact that modern-day society is data-driven, this results in all kinds of organizations actively engaged in collecting, using, storing, and sharing one’s information. This data-driven society, has led to an individual being both citizens and as referred to by the European General Data Protection Regulation, ‘data subjects.’ Modern laws in society generally recognize some forms of personal information collection as naturally more important than others this is why it is critical that one understands the distinction between, various laws that focus on reasonable and lawful collection by public bodies, and laws that tie information collection to ideas around consent. Key to note is that these laws that include ideas of consent, are usually applied to private and non-profit organizations.

Privacy is regulated in both the private sector and the public sector, and privacy regulations are operationalized through the use of various statutes, that allow an individual to have their privacy rights protected in various parts of Canada.

Regarding legal codes, the legal codes one needs to engage with to understand how privacy works in both Canada and Japan, one needs to look at:

- *Section seven of the Canadian Charter of Rights and Freedoms of 1982*,⁶⁰

⁵⁷ Japanese Law Translation. (2021). Act on the Protection of Personal Information (Partly unenforced) Act No. 57 of 2003. Retrieved from: <https://www.japaneselawtranslation.go.jp/en/laws/view/4241/en>. as it appeared on April 9th 2024.

⁵⁸ *R. v. Bykovets*, 2024 SCC 6 (CanLII), <<https://canlii.ca/t/k358f>>, retrieved on 2024-04-09

⁵⁹ Canadian House of Commons. Standing Committee on Access to Information, Privacy and Ethics. *An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts*. 1st sess., 44th parliament, 2021 – 2024. Accessed May 1st 2024 from: <https://www.parl.ca/legisinfo/en/bill/44-1/c-27?view=progress>

⁶⁰ Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. as it appeared on March 2024 from: <https://laws-lois.justice.gc.ca/eng/const/page12.html#:~:text=7%20Everyone%20has%20the%20right,the%20principles%20of%20fundamental%20justice>.

- *The Canadian Privacy Act of 1996*,⁶¹
- *The Canadian Personal Information Protection and Electronic Documents Act of 2000*,⁶²
- *Part three and four of the Freedom of Information and Protection of Privacy Act of British Columbia of 1996*,^{63,64}
- *British Columbia's Personal Information Protection Act of 2004*,⁶⁵
- *Japan's Constitution of 1947*,⁶⁶
- *Japan's National Information Disclosure Law of 2001*,⁶⁷
- *Japan's Act on the Protection of Personal Information of 2003*,⁶⁸
- and understand both the Common and Civil law systems.

Public Sector:

State-focused laws, specifically in Canada regarding privacy, tend to be applied on the basis of reasonable and lawful grounds. This means that a privacy violation is valid to take place, as long as there is a reasonable and lawful ground that exists justifying one's actions, the laws engaged with this idea relate to the public sector are as follows.

*The Canadian Charter of Rights and Freedoms of 1982*⁶⁹ is a federal document that concerns public state activities at all levels: municipal activities, provincial police forces, and charter rights. Specifically, the relationship between state institutions, and individuals' privacy rights on a federal level under section seven, life, liberty, and security, and section eight, the right

⁶¹ Privacy Act, RSBC 1996, c 373, <<https://canlii.ca/t/565gt>> as it appeared on March 2024.

⁶² Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <<https://canlii.ca/t/541b8>> as it appeared on March 2024.

⁶³ Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165, <<https://canlii.ca/t/566l3>> as it appeared on March 2024.

⁶⁴ Ibid.

⁶⁵ Personal Information Protection Act Regulations, BC Reg 473/2003, <<https://canlii.ca/t/55hr5>> as it appeared on March 2024.

⁶⁶ Prime Minister of Japan and His Cabinet. (2024). The Constitution of Japan. Retrieved from: https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html. as it appeared on March 2024.

⁶⁷ Repeta, L. & Schultz, D. (2002). Japanese Government Information: New Rules for Access. Retrieved from: <https://nsarchive2.gwu.edu/nsa/foia/japanfoia.html>. as it appeared on March 2024.

⁶⁸ Japanese Law Translation. (2021). Act on the Protection of Personal Information (Partly unenforced) Act No. 57 of 2003. Retrieved from: <https://www.japaneselawtranslation.go.jp/en/laws/view/4241/en>. as it appeared on March 2024.

⁶⁹ Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. as it appeared on March 2024.

to be protected from unreasonable search and seizure. Central to highlight is that these sections do not exist to inform the public about the relationship between private organizations and people, rather, they exist to regulate the existing relationship between the two. This is to ensure that in cases such as *R. v. Fearon*⁷⁰ (2014), even when an individual is in the wrong for committing a criminal act, the state's actions are regulated.

*The Canadian Privacy Act of 1996*⁷¹ is jurisdictionally applied at the federal public sector level and, assists in further defining what is considered to be a violation of one's privacy rights within Canada, highlighting the need for legislation around privacy to intersect one another to ensure that as society adapts, and grows, one's privacy rights are protected.

*The Freedom of Information and Protection of Privacy Act of 1996*⁷² in British Columbia jurisdictionally applies to the public sector, taking the already existing privacy rights one has in Canada, and building upon them, defining specifically what rights to privacy one has while living in the province of British Columbia, in addition to defining what powers the privacy commissioner has in British Columbia.

*Japan's constitution of 1947*⁷³ applied federally, and is similar to the *Canadian constitution* of 1982, laying the foundation for an individual's privacy rights in Japan, which are highlighted under chapter-three article thirteen the Rights and Duties of the People.

*Japan's National Information Disclosure Law of 2001*⁷⁴ jurisdictionally applied federally across the country and further defined, what rights to privacy one living in Japan had, in 2002.

*Japan's Act on the Protection of Personal Information of 2003*⁷⁵ jurisdictionally applies federally as well, further defining both one's protection in relation to modern digital society and who is responsible for the development and implementation of privacy laws in Japan, after Japan faced over 25 billion cyber attacks in total, this document was formed that further defined an individual's right to privacy in Japan, ensuring that an individual's right to the protection of information in Japan was protected.

⁷⁰ *R. v. Fearon*, 2014 SCC 77, [2014] 3 S.C.R. 621. As it appeared on March 2024.

⁷¹ Privacy Act, RSBC 1996, c 373, <<https://canlii.ca/t/565gt>> as it appeared on March 2024.

⁷² Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165, <<https://canlii.ca/t/566l3>> as it appeared on March 2024.

⁷³ Prime Minister of Japan and His Cabinet. (2024). The Constitution of Japan. Retrieved from: https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html. as it appeared on March 2024.

⁷⁴ Repeta, L. & Schultz, D. (2002). Japanese Government Information: New Rules for Access. Retrieved from: <https://nsarchive2.gwu.edu/nsa/foia/japanfoia.html>. as it appeared on March 2024.

⁷⁵ Japanese Law Translation. (2024). Act on the Protection of Personal Information (Partly unenforced) Act No. 57 of May 30, 200. Retrieved from: <https://www.japaneselawtranslation.go.jp/en/laws/view/4241/en>. as it appeared on March 2024.

Private Sector:

The private sector in Canada functions similarly to the public sector, however, rather than addressing matters around lawful and reasonable grounds, the laws in the private sector address notions of consent the kind of laws that relate to the private sector are as follows.

The Canadian Personal Information Protection and Electronic Documents Act of 2000,⁷⁶ applies across Canada to all private sector organizations and defines the protection of information when referring to electronic documents. This document is key as society has transitioned into the digital age, defining consent in relation to modern-day society.

*The British Columbian Personal Information Protection Act of 2004*⁷⁷ jurisdictionally applies to the private sector, and builds upon the previous acts even further, by defining one's consent within British Columbia, clarifying the process one must take when an individual chooses to withdraw their consent regarding the use of their information.

Finally, understanding both the Common and Civil law systems, allows one to understand the jurisdictional applications of these laws, resulting in an individual being aware of the main differences between these two systems and understanding how they are applied within society. This understanding becomes particularly important when referring to both sectors in modern society as each has tech-integrated economies.

Central to understand however, is that these laws are outdated, the most recent one being from 2004, and though these laws are important, an individual must understand that that in today's current context, the separation of the public and private sectors is not always clear.

Moreover, within *R. v. Bykovets*⁷⁸ the Supreme Court of Canada recognizes this by importantly stating that “The Internet has exponentially increased both the quality and quantity of information stored about Internet users, spanning the most public and the most private human behaviour. The Internet has not only allowed private corporations to track their users but also to build profiles of their users filled with information the users never knew they were revealing. By concentrating this mass of information with private third parties and granting them the tools to aggregate and dissect that data, the Internet has essentially altered the topography of privacy under the *Charter*. It has added a third party to the constitutional ecosystem, making the horizontal relationship between the individual and the state tripartite. Though third parties are not themselves subject to s. 8, they mediate a relationship which is directly governed by the *Charter* — that between the defendant and police. This shift has enhanced the state's informational capacity.”⁷⁹

⁷⁶ Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <<https://canlii.ca/t/541b8>> as it appeared on March 2024.

⁷⁷ Personal Information Protection Act Regulations, BC Reg 473/2003, <<https://canlii.ca/t/55hr5>> as it appeared on March 2024.

⁷⁸ *R. v. Bykovets*, 2024 SCC 6 (CanLII), <<https://canlii.ca/t/k358f>>, retrieved on 2024-04-09

⁷⁹ *R. v. Bykovets*, 2024 SCC 6 (CanLII), <<https://canlii.ca/t/k358f>>, retrieved on 2024-04-09

Surveillance and Privacy:

When talking about, and attempting to understand ideas of privacy, it is important to understand Michel Foucault's Panopticon model, historically, Foucault was interested in the relationship between power, discipline, and architecture. Though Foucault did not agree with Jeremy Bentham's panopticon prison model, Foucault argues that this model provided a good illustration of how power functions in the context of modern institutions, highlighting that power produces subjectivities. Foucault used Bentham's Panopticon model as a way to control those who had been incarcerated, this mode of control worked because those in prison were aware of the fact that those in the watch tower were looking down at them, which resulted in a change in behaviour, due to the fact that these prisoners internalized the existence of a constant gaze. This influence however, is not perfect, and generated resistance, taking place through actions such as blocking the surveillant gaze so those being watched can not be seen and watching the watchers reducing the intensity of the gaze.

Beyond Foucault: Privacy in Modern Society:

Richards,⁸⁰ argues that in modern society, one's privacy rights are given up before the individual is aware that they have chosen to give them up. What is critical from this point by Richards is that most individuals within modern-day society are not aware that they even have a right to privacy to begin with, resulting in various individuals within society engaging with social media and various other aspects of society, under the impression that all the information posted and collected about them is public knowledge. There exists a narrative within modern society that privacy is 'dead', however, Richard argues this is not true, rather that, one's privacy is there for the taking for others to profit off of. Privacy as a concept is concerned with, the rules that govern, the extent that information is detected, collected, used, and stored, and how the way that these activities are performed affects one's life within society, drawing attention to the critical fact that privacy in today's society is as important as ever.

Adding to Richard's argument, Harcourt⁸¹ brings Foucault's point to modern society by pointing out that, when an individual chooses to engage with social media apps such as Instagram, or Facebook within modern society, the violation of one's non-cognisant rights, takes place in the background through private organization's collection of metadata from the individual's engagement with these apps.

Previously in 1984, before social media was normal, George Orwell presented a new idea about privacy, that individuals in the future would be constantly monitored by those in power.⁸² This idea was built upon Jeremy Bentham's panopticon model,⁸³ where Michel Foucault⁸⁴

⁸⁰ Richards, N. (2022). *A Theory of Privacy as Rules*. Why privacy matters, pp. 45-69. Oxford University Press.

⁸¹ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

⁸² Orwell, G. (2021). *Nineteen Eighty-Four*. William Collins, an imprint of HarperCollins Publishers.

⁸³ Referring to Bentham's 1786 Panopticon

⁸⁴ Foucault, M. (1995). *Discipline and punish: The birth of the prison* (A. Sheridan, Trans.; Second Vintage Books edition). Vintage Books.

highlighted the importance of a constant surveillant gaze as a way for internalized social control.⁸⁵ Specifically, Harcourt⁸⁶ argues that an individual needs to understand desire in the context of privacy in modern society. This is because though the panopticon model can be used as a form of social control, it actually suppresses one's desire to watch others and be watched. When one is subject to the panopticon model, they internalize the constant surveillant gaze and suppress their desire in order to act in accordance with societal expectations.

In today's context, the desire to be watched and in turn watch others is not suppressed but rather encouraged due to the fact that this concept allows for surveillance in modern technological society to take place. Though concepts such as the surveillance state, and Big Brother, are known by some in today's digital society, Harcourt, amongst a number of other researchers such as Bauman and Lyon,⁸⁷ have found these concepts of privacy to be not as commonly prevalent in today's society as they should be. Harcourt⁸⁸ argues the panopticon ideology has evolved to fit the function of privacy in today's current context, becoming a mirrored glass pavilion rather than a panoptic model. In other words, in today's society, an individual's desire to both be watched by other people, and in turn watch others, has shifted from a hierarchical gaze to an equal one, demonstrating how social media functions in today's context, allowing an individual to act on this desire to watch and be watched, amplifying what is possible so that private companies can collect as much data from individuals.

⁸⁵ Referring to Foucault building upon Bentham's panopticon in 1975

⁸⁶ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

⁸⁷ Bauman, Z. & Lyon, D. (2013). *Liquid surveillance as post-panoptic. Liquid surveillance: A conversation*. Polity Press, pp. 52-75

⁸⁸ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.



89

Figure:2

In 1988 thirteen years after Foucault published about the panopticon as a tool for social control, Roger Clarke introduced the term ‘dataveillance’⁹⁰⁹¹ Dataveillance is a very prevalent term, which Langlois⁹² describes using the metaphor of an individual applying for a job. Langlois argues that this term is best demonstrated in modern society when one considers a potential employer viewing one’s social media page before offering them a job, using the data one adds online, as a way to surveil another individual’s life. In an everyday sense, this term is applied whenever an individual engages with any level of modern society, as modern society is integrated with technology, built around the collection of one’s information for various purposes, resulting in a data trail being left by individuals, that allows one who has access to view this trail, to learn in detail about another individual’s life without ever interacting with them.

⁸⁹ This figure refers to an example of the way in which the surveillant assemblage works in North America.

⁹⁰ Leman-Langlois, S. (2019). Technologies of Surveillance. In M. Deflem (Ed.) *The Handbook of Social Control*, pp. 349-360. Oxford: Wiley Blackwell.

⁹¹ Oxford Reference. (2024). dataveillance. Retrieved March 17th. 2024, from: <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095701590>.

⁹² Leman-Langlois, S. (2019). Technologies of Surveillance. In M. Deflem (Ed.) *The Handbook of Social Control*, pp. 349-360. Oxford: Wiley Blackwell.

Haggerty and Ericson⁹³ also build upon Foucault's theoretical model of the panopticon,⁹⁴ drawing our attention to the fact that dataveillance and our surveillant gaze does not exist the same way that it did before the creation of the internet. Traditionally, the panopticon model uses hierarchical observation, to evaluate and judge prisoners against various standards of normalcy. In today's society, there is the existence of a 'surveillant assemblage',⁹⁵ various different private companies that collect data for various specific purposes. This allows an individual the ability to sell specific data for profit and provide those who want it with a snapshot into one's life. Once an individual has acquired enough kinds of data about one's life this way, they can begin to build a data double of that person predicting their movements before they are made.

Contrary to Foucault,⁹⁶ Bauman and Lyon,⁹⁷ argue that this sort of physical gaze in today's society has changed, rather than being used as a public form of social control, this ideology has shifted to being a form of social control in the background. This shift results in an individual's privacy in today's society being violated more frequently than ever before, without the immediate feeling of a privacy violation existing. When one has passive feelings toward privacy violations, rather than active feelings of concern, this allows them to take place. Social control as addressed by Foucault⁹⁸ only works as a result of the individual being cognizant of the surveillant gaze towards them. In current society, surveillance is dataveillance, transforming prior traditional understandings of surveillance and becoming a transaction of consent for engagement, where ultimately privacy is the new digital currency. What is central is that the point that this new currency is collected, whether one is aware of the fact that they are giving up their data or not.

The shift from foreground to background is important to address, as Lyon, et al.⁹⁹ highlighted that in modern Western society, an individual engages with these kinds of privacy violations daily, without having any idea they have done so. To demonstrate how these violations take place, Lyon¹⁰⁰ provides a snapshot of the day in the life of a nine-year-old girl, arguing that one's information in today's society is collected not through direct means anymore, but through various obscure ways that intentionally avoid causing concern so that as much data can be collected.

The argument posed is that the collection of all information classifies as a privacy violation, a counter argument to this point is that, in modern society, pop-ups to agree to one's terms and conditions are unavoidable. Taking the time to read each existing contract one engages with in

⁹³ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

⁹⁴ Foucault, M., & Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Pantheon Books.

⁹⁵ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

⁹⁶ Foucault, M., & Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Pantheon Books.

⁹⁷ Bauman, Z., & Lyon, D. (2013). *Liquid surveillance: A conversation*. Polity Press.

⁹⁸ Foucault, M. (1995). *Discipline and punish: The birth of the prison* (2nd Vintage Books ed). Vintage Books.

⁹⁹ Lyon, D., Bennett, C. J., Steeves, V. M., & Haggerty, K. D. (Eds.). (2014). *Transparent lives: Surveillance in Canada*. AU Press.

¹⁰⁰ Lyon, D., Bennett, C. J., Steeves, V. M., & Haggerty, K. D. (Eds.). (2014). *Transparent lives: Surveillance in Canada*. AU Press.

modern society would take a total of roughly 249 hours a year.¹⁰¹ Therefore, because privacy in concept deals with ideas related to consent, and consent relates to an individual's autonomy. Whether or not an individual has the right to consent to their data being collected and can do so willingly becomes the key question. Individuals in modern society are not fully consenting to the collection of their data, as they are making uninformed choices to save time, without being aware of the existing terms and conditions of the contract, resulting in a violation of privacy as, due to the way privacy contracts in modern digital society are structured, this allows for the collection of one's data for various purposes to take place, where one's privacy is being taken advantage of by others. Justifying the idea of violation in today's society, surveillance is intrusive, where individuals click accept to all terms with preconceived ideas of a particular privacy policy, prior to any engagement with them. This is because, there exists a grey area when it comes to consent, regarding whether that individual is consenting to have their data collected only at the current moment to save time, or if that individual is consenting to have their information collected at a later date, without being aware of the fact that they have signed off for that to take place. Further, demonstrating that an individual's concept of a good privacy policy is manipulated and ultimately violated by companies for profit.

Richards¹⁰² drew upon Edward Snowden's revelations,¹⁰³ as discussed by Harcourt¹⁰⁴ and others in 2013, highlighting how the National Security Agency in America, was tapping into other applications to build data doubles using the surveillant assemblage method addressed above. Snowden's revelations were so profound they were the major focus of privacy studies for a period, this focus resulted in various arguments posed that drew attention to the point that one, 'has nothing to hide' misdirecting individuals from the function of privacy in society. Specifically, the fact that privacy allows for the existence of freedom, allowing an individual to live and grow as a person without the worry of constantly being watched by the state.

Haggerty and Ericson¹⁰⁵ argue that when someone has access to all of this data collected one's privacy is greatly at risk. For example, when an individual goes shopping for groceries, if the grocer that individual shops at has a loyalty system in place, that organization is collecting that individual's data for their own purposes. At the same time, when at the grocery store that same individual receives a phone call and picks up their cell phone, their chosen cell phone company is

¹⁰¹ Berreby, D. (2017). *Click to agree with what? No one reads terms of service, studies confirm*. The Guardian. Retrieved March 17th, 2024, from: <https://www.theguardian.com/technology/2017/mar/03/terms-of-service-online-contracts-fine-print>

¹⁰² Richards, N. (2022). *A Theory of Privacy as Rules*. Why privacy matters, pp. 45-69. Oxford University Press.

¹⁰³ The Guardian. (2013). *NSA Files: Decoded What the revelations mean for you*. The Guardian. Retrieved March 17th, 2024 from: <https://www.theguardian.com/world/interactive/2013/nov/01/snowden-nsa-files-surveillance-revelations-decoded#section/1>

¹⁰⁴ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

¹⁰⁵ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

tracking the duration of that call for their own purposes. What Haggerty and Ericson¹⁰⁶ proposed is that when an individual has access to all of the data these various companies collect for their own purposes, they have access to what is referred to as a surveillant assemblage. Meaning that an individual then has access to a multitude of information about a different person that was collected for purposes specific to a chosen company. What is key is who has access to this kind of data, because depending on who has access, results in the way that this collected data is used, resulting in data going from being collected for a specific company's purpose, to being used to fit that individual chosen purposes.

Surveillance Capitalism:

Zuboff and Schwandt¹⁰⁷ argue, that, an individual wanting to be popular on social media, gives up their data not realizing the gravity of the situation, transforming their own experiences into predictive algorithms through the use of an attention economy, that private companies use for profit. When one comes to understand this idea, they realize there is no way to push back against it unless a complete reform of the law itself were to take place, which results in many individuals not being fully aware of the weight of some of the social media posts they are making, demonstrating why understanding the concept of 'surveillance capitalism', the fact that companies are making money off of other people's data, in today's society, is so important.

These points are why taking a critical approach to this research is so significant as, by doing so existing power relations between companies and the individual can be demonstrated. In turn, showing relationships between the lived experiences of individuals, and the companies they engage with, when an individual understands the fact that they are constantly being watched and monitored in modern society, as well as understands the surveillant assemblage, one quickly feels helpless to increase their own privacy. Due to the way modern society is structured, companies can collect as much data from you in the background, without you being aware of it in the foreground, and when an individual realizes the gravity of the situation, they begin to realize they have already shared and engaged too much with social media, and other various outlets, where their data is being collected within society, resulting in a mindset that there is no action that can be taken, to change their already collected information.

Richards¹⁰⁸ argues that one must, change the way information collection is regulated in order to change the way companies engage with that collected data. That the rules that exist that govern the collection and use of information, are contrary to the kinds of rules that currently are in place. This is not to say that the rules currently in place in Western society are necessarily bad, rather, in order to be applicable in today's current context, when laws are being formed one's perspective on the topic of privacy needs to shift from a perspective of protection of information, to the regulation of information. Richards believes this shift needs to take place by drawing upon his past experiences. Highlighting that the way in which questions around privacy are framed

¹⁰⁶ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

¹⁰⁷ Zuboff, S., & Schwandt, K. (2019). *The age of surveillance capitalism: the fight for a human future at the new frontier of power*. Profile Books.

¹⁰⁸ Richards, N. (2022). *Why privacy matters*. Oxford University Press.

results in two very different conversations taking place. Richards argues further that modern society has gone beyond the scope of the current existing privacy laws, having reviewed this literature, it is clear to these scholars that, privacy laws have exceeded what was previously thought possible, and therefore these laws need to be adapted to reflect modern society.

Nippert-Eng,¹⁰⁹ argues the existence of social realms in relation to privacy regimes, drawing attention to the fact that an individual does not necessarily need to directly engage with an institution or privacy law, for one to interact with privacy. Instead, within modern society, the kinds of things an individual chooses to keep on them when they leave their house, and what information they choose to share in a public setting, results in passively engagement with privacy on a micro level. When one engages passively this way, it is very easy to quickly omit interactions with privacy, transitioning the conversation, to focus on the concept of privacy that refers to privacy from a legal standpoint, rather than from a lived experience standpoint.

Understanding privacy from a holistic perspective, Calavita,¹¹⁰ drew attention to the fact that the laws that are written and passed in Western society, are only applied to individuals of a certain class, resulting in a difference in application that appeases the upper class within modern society, rather than to all members of society. When one considers the various perspectives that can be taken towards the concept of privacy this point becomes key, highlighting the need for privacy to be further understood from a multi-faceted lens rather than a laser-focused perspective.

Mizutani, et al.¹¹¹ applied a similar ideology to Calavita arguing that “some might hastily conclude [that due to the fact that there is no word for privacy in traditional Japanese] that the concept of privacy does not exist in the Japanese language or culture, the principle ‘No word, no concept’ is a gross oversimplification of the matter” This is key as the concept of privacy in Japan clearly does exist contrary to what some may believe. This kind of mystification about those living in Japan is frequently present among various scholars.

Mizutani, et al. break this argument down stating that the “The minimal conception of privacy provides a conceptual framework that is filled out by cultural conventions. Japan and America differ in their rich conceptions of privacy but share the minimal conception.” They refer to the Oxford English Dictionary’s definition of privacy¹¹² when addressing the minimal conception of privacy, and state regarding the rich conception of privacy that “many of the cultural differences in privacy conventions between Japan and America stem from the differences with regard to the roles of individuals and groups.” Moreover, in regard to data protection within Japan

¹⁰⁹ Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press.

¹¹⁰ Calavita, K. (2010). *Invitation to law & society: An introduction to the study of real law*. University of Chicago Press.

¹¹¹ Mizutani, M., Dorsey, J., & Moor, J. H. (2004). The internet and Japanese conception of privacy. *Ethics and Information Technology*, 6(2), 121-128.

¹¹² Oxford English Dictionary. (2007). Privacy. Accessed May 1st 2024 from: https://www.oed.com/dictionary/privacy_n

Mizutani, et al. state that, “Japan has been slower than other industrialized nations in developing policies to protect individual genetic information.”

Orito, & Murata¹¹³ argue that by highlighting the Japanese concepts of 内 *uchi* and 外 *soto* (one’s inner and outer circle) the way in which Japanese people choose to interact with others based on their relationship, results in them engaging with privacy on a micro level, interacting with the concept of privacy on a small scale without being necessarily aware they are doing so. Similar to Nippert-Eng’s argument¹¹⁴ where she talks about the beach and that when one goes to the beach they blur “what is truly on an island of privacy and what is truly in the ocean of publicness. [That] [i]t is a place where we can see a tremendous amount of boundary work—and even a healthy dose of boundary play—as [they] negotiate how much land and water [they] think is present at any given time or place, how much of both [they] want to be present, and which one [they] think should be emphasized.”

Ye & Ho¹¹⁵ highlight the lack of awareness using a quantitative two-wave panel survey to understand the relationship that university students have with privacy in Japan, this research draws attention to the fact that privacy concerns and protective behaviours were not common practice amongst university students. Specifically, they found that male students who took steps to protect their privacy rights were viewed by peers as lesser or weak, affecting their relationships and well-being. Critically privacy in Japanese society amongst university students, based on Ye & Ho’s analysis is more of a background issue not being upfront, similar to Western society where when an individual’s privacy is violated, that individual does not always experience it as a violation, disregarding the interaction as harmful having their data further collected by others in the background.

Higashizawa and Aihara¹¹⁶ drew attention to the concept of privacy, arguing that additional privacy frameworks need to be brought forth, and amendments to current existing privacy policies need to take place, ensuring that an individual’s privacy rights within Japan are protected as society continues to advance. In other words, stating that the Japanese Act on the Protection of Personal Information needs to be amended, so that similar to what Richard argues,¹¹⁷ the core root of privacy as regulation can be addressed, rather than privacy as a protection in Japan. This distinction brought to light is key as the way that privacy is regulated, determining what rights an individual has available, differs from the way that privacy is enforced, often being used as a way to protect oneself.

¹¹³ Orito, Y. & Murata, K. (2008) Socio-cultural analysis of personal information leakage in Japan. *Journal of Information, Communication & Ethics in Society*, 6(2), 167-171.

¹¹⁴ Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press.

¹¹⁵ Ye, S., & Ho, K. K. W. (2019). Would you feel happier if you have more protection behaviour? panel survey of university students in japan. *Behaviour & Information Technology*, 38(4), 422-434. <https://doi.org/10.1080/0144929X.2018.1544275>

¹¹⁶ Higashizawa, N., & Aihara, Yuri. (2017). Data Privacy Protection of Personal Information Versus Usage of Big Data: Introduction of the Recent Amendment to the Act on the Protection of Personal Information (Japan). *Defense Counsel Journal*, Vol. 84,(Iss. 4.), 115.

¹¹⁷ Richards, N. (2022). *Why privacy matters*. Oxford University Press.

Why use a Critical Criminology and Conflict theory amongst others:

Understanding how privacy is perceived at local levels is helpful in understand how social order is maintained. Various theorists such as Snider,¹¹⁸ Bauman and Lyon,¹¹⁹ Langlois,¹²⁰ and Harcourt,¹²¹ took critical perspectives towards privacy in their research. This research, however, is inferred by both a Critical Criminology Conflict theory perspective, which illustrates the importance of these topics in peoples' everyday lives.

These two paradigms are best suited for this qualitative research, as they allow us to understand various perspectives one may have towards justice and, in turn, privacy.

Understanding the relationship between private organizations and individuals in society, specifically, the difference in perspectives toward privacy that individuals may hold, based on their class and status within society, in conjunction, providing an understanding of the relationship one has with various private organizations, when they choose to share data online, has become a resource fought over by companies as addressed by Zuboff,¹²² and Harcourt.¹²³ These points clarify that there is not one 'correct' perspective on privacy and that by understanding the multiple perspectives towards privacy that have been posed both historically, and within the modern context, one can better understand where an individual's privacy perspectives come from.

Being aware of the existing relationship between private companies and individuals, it is clear regarding an individual's data, that the significant power and control associated with privacy is held by private companies within modern-day surveillant capitalist society. Calivita¹²⁴ argues that the law as it is written in society, is different than the way it is enforced in society. Calivita highlights that there exists a common understanding between various forms of society and the types of laws that exist in society. This common understanding refers to the fact that in a capitalist society, an individual expects to have laws that reflect the kind of society that they live in.

Ishii and Komukai apply a Japanese lens to this idea, highlighting that even though a massive amount of privacy breaches took place in 2014, "There has been no case in which a person or entity was held criminally responsible."¹²⁵ This is not to say that individuals who experienced privacy breaches in Japan did not receive compensation for damages, only that there was no formal

¹¹⁸ Pearce, F., & Snider, L. (Eds.). (1995). *Corporate Crime: Contemporary Debates*. University of Toronto Press. <https://doi.org/10.3138/9781442673489>

¹¹⁹ Bauman, Z., & Lyon, D. (2013). *Liquid surveillance: A conversation*. Polity Press.

¹²⁰ Leman-Langlois, S. (2019). Technologies of Surveillance. In M. Deflem (Ed.) *The Handbook of Social Control*, pp. 349-360. Oxford: Wiley Blackwell.

¹²¹ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

¹²² Zuboff, S., & Schwandt, K. (2019). *The age of surveillance capitalism: the fight for a human future at the new frontier of power*. Profile Books.

¹²³ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

¹²⁴ Calavita, K. (2010). *Invitation to law & society: An introduction to the study of real law*. University of Chicago Press.

¹²⁵ Ibid.

penalty applied to anyone living in Japan as a result of these breaches, drawing attention to a difference between the way in which laws are written and enforced within Japanese society.

Existing Gaps & Further Inquiry:

During my engagement with this literature, it became clear that the conversation around privacy too closely followed Canadian literature over other literature published on this topic. Looking at two different countries' publications regarding privacy, various articles were published that assisted an individual in understanding privacy from a Canadian context, and there were few articles in English that focused on bringing to light an understanding of privacy from a Japanese lens. This lack of English-language Japanese publications on privacy, especially on lived experiences of privacy, is a limitation of the research.

A second limitation of this research is that my Japanese language skills are not yet sufficient enough to read the Japanese-language literature on this subject, so this research is limited to English-language scholarship engagement.

Hopefully, this research can be a step towards further understanding the argument around privacy in the current context.

A third limitation that exists within this research is that the literature engaged with focuses on the private sector in Canada and not on the lived experiences of individuals. For example, Harcourt¹²⁶ and Zuboff¹²⁷ address the way that individuals, and communities, have been affected by data collection in modern-day society, however, do not include interviews about the lived experiences of individuals or communities. This creates a gap in understanding, and this gap is addressed by research such as this one, and the one published by Nippert-Eng.¹²⁸

In modern Western society, there has not been any published work that replicates the in-depth understanding of one's lived experience with privacy that Nippert-Eng¹²⁹ provides for Japan. Bennet et al.¹³⁰ provide a snapshot into an individual's daily life, in conjunction with Nippert-Eng¹³¹ I am unaware of any other example of this sort of research in this field. This means that a researcher examining privacy in Western modern society, in my position has no other choice but to draw upon the perspectives of those in the private sector resulting in the existence of a potential flaw.

¹²⁶ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

¹²⁷ Zuboff, S., & Schwandt, K. (2019). *The age of surveillance capitalism: the fight for a human future at the new frontier of power*. Profile Books.

¹²⁸ Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press.

¹²⁹ Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press.

¹³⁰ Lyon, D., Bennett, C. J., Steeves, V. M., & Haggerty, K. D. (Eds.). (2014). *Transparent lives: Surveillance in Canada*. AU Press.

¹³¹ Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press

This research allows future researchers, to add to the existing privacy conversation by having an additional resource, that was not available at the time this research was conducted. Many of the theorists reviewed show a macro level of engagement with privacy, looking at privacy from a hierarchical top-down model. Very few scholars attempt to address privacy at a micro level, looking at individuals' everyday engagement with privacy. Justifying why this research focus on the lived experiences, and engagement, an individual has with privacy, takes a grassroots bottom-up approach to the topic of privacy, rather than the traditional top-down approach taken by researchers in the field.

A fourth limitation that this research attempts to fill is understanding of the 'talk versus the walk' of law presented by Calavita.¹³² Legal policy analysis, and everyday use of law, are studied as, separate entities this research assists in bridging the gap between understandings privacy law in theory, and in practice, demonstrating how these laws are enforced and affect individual's lives.

Finally, a fifth limitation of this research is the sample size that was used. As a result of this research being an exploratory study due to the size of the sample used, this sample is non-representative of the greater population. This is because there is no conceivable way to determine the perspectives of the greater population in both areas, based on a total of four conducted student interviews. Highlighting the need for further exploration of this research that replicates this process on a larger scale in order to properly determine the perspectives of the greater population in both areas.

In Summary:

This literature review highlighted several key concepts. First, looking at the 'panopticon' and the 18th-century origins of the circular prison where the few watch the many, provides a good understanding of how social control historically took place within the field of Criminology.¹³³ In modern society the panopticon and theory of social control has transitioned from foreground to background, being used by private organizations who are constantly looking for and finding new ways to surveil and monitor others within society.

Second the concept of the 'synopticon' refers to the many watching the few, specifically, those who are in positions of power. This concept is often depicted as a family watching a television, this concept demonstrates that those who are selling the most data in today's society seem to hold most of the power.¹³⁴ Moreover, to do a complete comparative analysis of privacy regimes one must address both concepts of transparency regarding private companies, and how individuals are affected by these conceptions on a societal level.

¹³² Calavita, K. (2010). *Invitation to law & society: An introduction to the study of real law*. University of Chicago Press.

¹³³ Foucault, M., & Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Pantheon Books.

¹³⁴ Mathiesen, T. (1997). The Viewer Society: Michel Foucault's 'Panopticon' Revisited. *Theoretical Criminology*, 1(2), 215–234. <https://doi.org/10.1177/1362480697001002003>

Specifying the topic of privacy the third key concept is what Haggerty and Ericson refer to as the ‘surveillant assemblage’,¹³⁵ which is a term used in the field of privacy which highlights the idea that if an individual has access to collect data from various organizations that are collecting data for their own specific purposes. This idea quickly becomes a privacy concern, as if an individual has access to the data collected by organizations, they can then use that data to create a data double of a different individual without that individual having to directly collect any data themselves. Haggerty and Ericson state, “The public is slowly awakening to the profits that are being made from the sale of their data doubles. One consequence of this recognition has been the further commodification of the self.”¹³⁶

The fourth key concept is the term, ‘mirrored glass pavilion’,¹³⁷ which presents the idea that because of the shift in technology, and the popularity and normalization of cell phones, Foucault’s prior model of surveillance and control has shifted from the foreground to the background. Fulfilling the desire for an individual to want to be watched and in turn watch others to be taken advantage of by private companies for profit. Harcourt cites legal scholar Eben Moglen to clarify this understanding by stating that “People love spying on one another”, Eben Moglen reminds us. ‘And [companies such as] Facebook allows them to spy on their friends in return for giving every- thing up to the boy with the peephole in the middle.’³⁹ Then we all meet again in front of the screen, spectators of the surveillance and the exhibition, viewers monitoring our performances and expositions, watching and watched by means of our texts, our mobile apps, our photos, our posts.”¹³⁸

Finally, the fifth key concept addressed is the ‘attention economy’,¹³⁹ which builds upon this above concept, being defined as ‘the collection and selling of one’s data relating to how long an individual pays attention to a specific source’,¹⁴⁰ usually in today’s context being various social media outlets. Zuboff states that, “The real power is that now you can modify real-time actions in the real world. Connected smart sensors can register and analyze any kind of behavior and then actually figure out how to change it. Real-time analytics translate into real-time action.”¹⁴¹

These key concepts coupled with an understanding of the term ‘surveillance capitalism’¹⁴² which highlights the fact that organizations create predictive algorithms to manipulate those in society so that the organization can benefit from the collection of an individual’s data, results, in the concept of the ‘attention economy,’ and the concept of the ‘mirrored glass pavilion,’ becoming

¹³⁵ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

¹³⁶ Ibid.

¹³⁷ Harcourt, B. E. (2015). *Exposed: Desire and disobedience in the digital age*. Harvard University Press.

¹³⁸ Ibid.

¹³⁹ Zuboff, S., & Schwandt, K. (2019). *The age of surveillance capitalism: the fight for a human future at the new frontier of power*. Profile Books.

¹⁴⁰ Goldhaber, M. H. (1997). The attention economy and the Net. *First Monday*. <https://doi.org/10.5210/fm.v2i4.519>

¹⁴¹ Ibid.

¹⁴² Ibid.

critical to understanding how privacy works in today's modern society. Where due to the popular technological advancement of social media, when one understands these concepts, they can piece together how an individual understands, values, and experiences, privacy in their everyday lives.

In short, though many different perspectives on privacy are presented and argued none of these models are perfect, there is not one perspective of privacy that is 'better' than another. Only through engaging with various intersecting perspectives, can one form an encompassing modeled system of understanding of privacy in today's current context.

Data Collection:

Interviews were conducted in place of other forms of data collection, as they allowed data to be collected that was otherwise unobtainable had they not been used. Professionals working in the privacy field were included as a part of these interviews, to allow an expert perspective on privacy that would not be provided by students.

Within these interviews, there were several points that needed to be addressed. Relevant to this research there were four points that were highlighted and broken down into four major sections. The first point highlights individual's perceptions of privacy, and how one comes to understand and experience privacy in their daily life, the second one addresses how one's perspectives of privacy are shaped by the way their data is collected, the third brings to attention what values and feelings one holds in relation to the concept of privacy, and finally the fourth draws attention to the need for responsibility and change.

Perceptions of Privacy:

Addressing the first point, when reading over the transcribed interviews it became apparent that there was a clear difference between the ways in which the students and the privacy professionals, understood privacy in their everyday lives. In the case of the students interviewed, amongst both the Canadian students and the Japanese students, when asked where their perspectives of privacy come from there was a collective response that their perspectives of privacy came from their engagement with others, whether that be friends or family, and from their own self-study on the topic of privacy.

Every person who considers the term privacy has their own definition of what the term means. Where do your perspectives of privacy come from?

I think its just from being always critical, and always thinking about how others can, especially people in power, can use their knowledge on me for their advantage.

Maria (She/her)

yea the privacy thing I think comes more from parents rather than schools because school is diverse and there's certain things the teachers wouldn't tell you to keep private that your parents would.

CrimStudent101(She/her)

I think it comes from friends, I think, but – like I think it not come from- I think it is happened, occurred from my friends.

Purin (She/her)

My parents, yea my teacher and my parents and also, I was learned myself though like social medias.

Leo (He/him)

Nippert-Eng highlighted that “‘privacy’ and ‘publicity’ are concepts that are coupled and related to each other in the same way as islands and oceans.”¹⁴³ In other words, in order to fully understand one’s lived experiences with privacy, one must understand where an individual’s values regarding privacy come from. This point remained true regarding the professionals interviewed as well, and though they were not directly asked where their perspectives came from, it was apparent that each professional interviewed had a slightly different perspective on the way in which they defined, and understood, the concept of privacy.

Moving ahead, because you seem very knowledgeable can I ask what do you believe are the good features of a solid privacy law?

What I would say from a high level. Rights to individuals, legal obligations for organizations and independent oversight.

Colin Bennett (Professor/Dr.), Emeritus Professor in Political Science at the University of Victoria.

Starting off here, as I’m sure you know, there are various different privacy laws that exist, what do you believe are the features of a good privacy law?

One that has a differential understanding of what personal information is, so specifically we want a law that would recognize different definitions and different types of personal information, knowledge, generation, and the right to self determination, in the context of indigenous peoples, many indigenous populations, for example recognize spiritual information as personal health information, and that is not encoded into any of our current understandings of what personal health information is right now

Joyce Yan (she/her), Access & Privacy Manager at College of Physicians and Surgeons of BC

The first question I wanted to ask you is, there is various different privacy laws, as I’m sure you’re aware of that exist, what do you believe are the good features of a privacy law?

I like that privacy laws focus on obviously the individual because often times in business the individual is the way a business will make money, and without you know laws like privacy laws really focusing on protecting the individual, you have a real imbalance of power.

Samantha Delechantos (she/her), Fasken Martineau DuMoulin LLP

¹⁴³ Nippert-Eng, C. (2010). Islands of privacy. University of Chicago Press, 4.

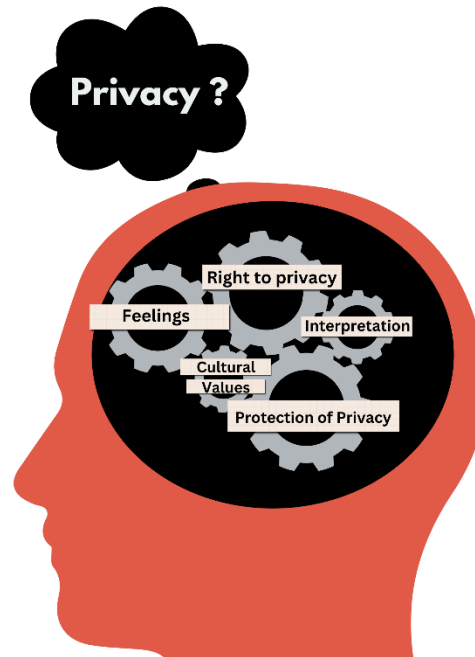
The very first questions that I wanted to ask is, as I'm sure you're aware there are various different privacy laws that exist, what do you believe are the features of a good privacy law?

they need to be accessible mechanisms, timely mechanisms, and then there needs to be some kind of oversight that's binding.

Meghan McDermott (she/her), Staff Counsel (Policy) at B.C. Civil Liberties Association

This comparison of students and professionals is important to take note of as, the way one engages with privacy on a daily basis, depends on that individual's values, feelings, and understanding of the concept of privacy, in addition to the other concepts they associate with the term. What is central is that these values, feelings, understanding, and associations one has towards privacy are a result of the way in which privacy regimes work. The way one values privacy and feels towards privacy, changes based on if an individual believes they have a right to privacy having a right to privacy as a result of the way privacy rights are protected by other bodies in power, and the way that other bodies determine how to protect privacy rights, stems from the way they are interpreted and understood.

Figure: 3



144

Amongst the students interviewed, many associated aspects of culture, to their understandings of privacy when asked questions related to privacy rights.

¹⁴⁴ This diagram represents the way one engages with privacy, each gear represents a different part of the privacy assemblage working together to form an understanding.

I spoke to other people that had been to Japan before and have studied Japanese culture and they said that there's a lot – in comparison to Canada when you are in Japan there is a lot more strict rules around privacy with kids?

ohhh,... ahhh..., うん (yes), うん (yes), people cover their face often, it's common because like even if it's a celebrity, they cover the kids face because - it is because they want to protect that kid's privacy from the media うん (yes), and the- it is for the kids future – like when the kids grow up uh it can be uh- this kids mother is celebrity A or this dad is celebrity B, so uh celebrity often cover the kids face on tv even they are celebrity うん (yes), and for some accident or incident the police often cover the name of the people who commit the Ah I am sorry, words in English.

Purin (She/her)

分かった(understand) in Canada do you feel the same way? That you have those kinds of rights here?

yes, I think so, but Japan is more secure I think, you know like for example, we can't use, I don't....how to say... you know for self-certification, we can't use mostly we cant use passport or those like – if the ID doesn't have address or more specific data we can't use for self-certification, so in Japan for now for self-certification we can just use government number or driver license that's it.

Oh.

that's just two uh IDs for self-certification, but in Canada we can do the self-certification like passport, or visa, or BC ID or if-if you have face photos and name and birthday, we can do the self-certification right? But in Japan it's not, so Japan is more secure, I think.

Leo (He/him)

Can you imagine a scenario in which your privacy rights might be violated?

huh, cuz right now like the first thing that goes into my mind is like privacy in general like when you are in public you ask for certain things to be done for you, but you know it may not- I mean for, like it's just coming to my mind I don't know if it really fits in with this but– I am Muslim so you know, I know some Muslim women that would wear the Niqāb, the Niqāb is basically you know your-like a full face coverage veil which you wouldn't take off in public, and I feel like there's certain places where you know you'- you'd go to, you know get your passport photo taken, or you know your drivers licence, and you know you would basically just ask for there to be some sort of privacy where you could get your photo taken but with nobody being able to see you other than the person taking the photo you know you just wanna keep it private.

CrimStudent101(She/her)

However, when professionals interviewed were asked if there were views or perspectives they associated with privacy, they brought to attention the point that, rather than focusing on their own cultural perspectives of privacy, they suggested that one should focus on the value of one's data, and engagement with private companies in today's digital world as private companies influence on individuals has transcended cultural understandings of privacy.

different cultures do have different views about privacy you know and um there are some cultures that are more open to sharing of information than others and there's a lot of research on that, but, in the global- what were talking about with digital privacy is that these companies, Facebook, Google, ChatGPT, multinational companies, Amazon etcetera are international, they're global and therefore they have overwhelmed different cultural identities, so they're having – what they say about privacy and what they say about your rights, is more important to look at than what individual cultures might think about privacy, because you know like it or not, were within this digital environment and we need it in order to purchase goods, to communicate, to have video conferences as we are having now, right, and that information therefore travels seamlessly across borders and across cultural boundaries, right and therefore over the years it's been important to ... look at this problem globally rather than from the point of view about whether or not people in BC have a different view about privacy than people in Ontario.

Colin Bennett (Professor/Dr.), Emeritus Professor in Political Science at the University of Victoria.

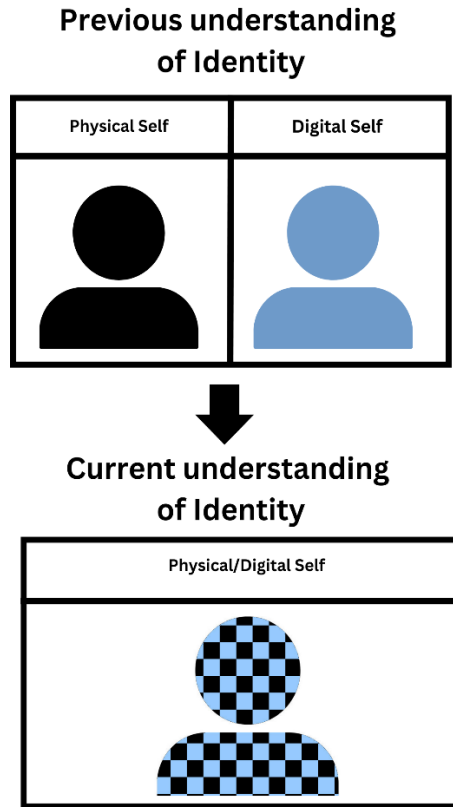
Due to the fact that “transactions are now computer-mediated we can observe behavior that was previously unobservable and write contracts on it. This enables transactions that were simply not feasible before.”¹⁴⁵ In other words, the professionals interviewed suggested that the value an individual has towards the services provided by private companies within digital society transcends one's cultural engagement with privacy.

Based on the idea of transcendence, “if [an individual] were to apply the panoptic diagram to thinking about surveillance today”¹⁴⁶ they would need to adapt the diagram to reflect modern-day society, transcending prior understandings of the panopticon. This is not to say that the prior panoptic model understood is not important in regard to understanding privacy, but rather that, in the eyes of some professionals, this model has become only one part of the bigger picture regarding the way in which individuals engage with privacy in today's society. When an individual comes to understand and engage with privacy, in today's society, “one promote[s] identity formation because privacy [allows for one] to figure out who [they] are and what [they] believe.”¹⁴⁷ However, as a result of engaging this way, that same individual then becomes a data subject to private companies. Highlighting why an individual in today's society needs to understand concepts related to privacy and data subjectivity.

¹⁴⁵ Zuboff, S. (2019). The age of surveillance capitalism: The fight for a human future at the new frontier of power (First edition). Public Affairs, 139.

¹⁴⁶ Bauman, Z., & Lyon, D. (2013). Liquid surveillance: A conversation. Polity Press, 53.

¹⁴⁷ Richards, N. (2022). Why privacy matters. Oxford University Press, 6.



148

Figure:4

How perspectives of privacy are shaped by data collection:

Both the Canadian participants and Japanese participants, understood privacy from a data collection standpoint, holding the viewpoint that, when a company collects one's data, they are interested in collecting information that can identify an individual. This understanding relates to one's digital footprint, and the kind of information displayed by individuals online, Harcourt states that in modern society, "The craving for stimulated distraction— a kind of self- centered distraction that reminds us that we are living, present, seen, clicked on, liked— makes us increasingly focus on our own digital traces, our new digital self."¹⁴⁹ With the exception of one of the interview participants, the other three students used social media on a daily basis with the main platform used being Instagram this is critical as even though there exists concern that one's data online can

¹⁴⁸ Key to note about this figure is that previously where it was possible for an individual to differentiate between the two identities both physical and digital, today these identities are mixed rather than separate. Related to privacy assemblages, the mixing of one's physical and digital identity, today functions as a way for companies to profit through the online being and physical being, becoming one associated identity.

¹⁴⁹ Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press, 110.

be used to identify individuals amongst the students interviewed, this concern does not prevent them from engaging with social media platforms.

instead of engaging with social media, how do you garner social interaction? if I may ask.

I just, I text my friends, I do know that there are, some corporations, that keep catalogs of your text in their data base. I even heard that, cars hold onto your text in their database and never delete them, so I don't even interact with smart cars or anything like that, haha. so yea I just text, msm with my friends, and I don't feel like I am missing anything because I don't find value in like taking pictures of all the things im doing.

Maria (She/her)

further can I ask, do you use social media in your day-to-day life?

yes, I do,

can I ask what kinds of social media platforms you engage with?

mainly Instagram, I would also- I would sometimes use facebook, snap chat is more rare I guess but I use that aswell sometimes,

Thank you

oh and whats app but that's basically just talking sort of thing it's not really – but yea.

CrimStudent101(She/her)

What kinds of social media do you use?

Instagram, twitter, now X haha, Line, tiktok maybe its all

Purin (She/her)

Can I ask where do your perspectives of privacy come from?

okay, let me think.

はい、(yes)

I mean, ah okay, when I was – especially for password or my birthday's, I use a lot of you know social media like twitter, Instagram, or line, when I using those like SNS there is so many people right– so many peoples who have a lot – who have ah thee - who thinking the other thing, not like me, so if I shared my privacy data to the other person, especially in the SNS, it's gunna be dangerous because I don't know them

Leo (He/him)

When one engages with social media platforms in today's society their identity is "abstracted from its territorial setting. It is then reassembled in different settings through a series of data flows."¹⁵⁰ These data flows are referred to as the surveillant assemblage,¹⁵¹ a series of different types of data, collected for specific purposes, that are then used to surveil others through the collection of these data flows. Central is the point that "'Assemblages' consist of a 'multiplicity of heterogeneous objects, whose unity comes solely from the fact that these items function together, that they "work" together as a functional entity'."¹⁵² In other words, assemblages are not perfect entities, and function related to privacy, as a result of collective data flows working together. Allowing the individual at the top of the data flow hierarchy to servial all aspects of one's life. This understanding of surveillance in relation to privacy assemblages was not apparent among the students interviewed. The main concern amongst students in relation to privacy was in regard to data collection, and data identification, specifically that data can be used to identify an individual. This point highlights the fact, that public and private sector regulations that are in place, need to be updated to reflect current understandings of law, as this model based on this data has become outdated; in other words, from the perspective of the student participants, data flows has been overshadowed by the way data is used to identify an individual.

The value of privacy:

The way in which individuals engage with technology in today's society has shaped various aspects of one's life, Kenan writes, "Information, and the technologies that handle it, are transforming our lives in ways as fundamental as the changes brought by fire."¹⁵³ This seems to be the case amongst most of the students interviewed when asked about their engagement with technology. Regarding the professionals interviewed though they were not specifically asked if they were concerned about the way their data was collected, the professionals interviewed collectively agreed that when referring to the regulation of current privacy laws in place, both provincially and federally, these laws were outdated, and failed to address new advancements in technology such as individuals use of artificial intelligence.

further, as – apologies, as somebody who is doing their masters at- in focus on privacy, do you believe that there exists a gap between privacy laws that are uh I guess on the 'on the books' in a sense -

Hm

and how they are applied within society?

¹⁵⁰ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

¹⁵¹ Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

¹⁵² Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

¹⁵³ Keenan, T. P. (2014). *Technocreep: The surrender of privacy and the capitalization of intimacy*. Greystone Books, 181.

haha, yes, haha yes I mean privacy laws are very aspirational, and they focus on, really consent right, like just- which I don't think is necessarily wrong, but it's missing some crucial aspects I think, because what ends up happening is that companies end up believing that if they provide a privacy policy that may be long and wordy and get someone to tick a box that it means hey we have free reign over that data because we've 'technically' gotten consent, and so I think it's kind of backfired in that you're giving almost corporations or just you know organizations in general an ability to be in compliance without really being in compliance. You know you're getting that tickbox consent but it's not real informed consent and I think that there's just that disconnect there, especially. And then once you get that consent right, it's like your use is just – there's- there's plenty of ways corporations find you know work arounds.

Samantha Delechantos (she/her), Fasken Martineau DuMoulin LLP

continuing can I ask, as an expert in the field, do you believe a gap exists between the privacy that exist 'on the books' and how these laws are applied within society?

Yes, the first thing that comes to mind is because enforcement mechanisms here are just so weak right, so we can say this is the law, people can listen to it out of the good will of their hearts or because you know it's the right thing to do, but unfortunately when it just comes down to it there is very little that can be done in terms of enforcement right, so – uh from the grassroots perspective like, working with small businesses I often get a lot of pushback, again you know like I- I put myself out there, and I tell- I am in facebook groups with small businesses and I say listen this is – these are the services that I offer, these are things you guys need to consider, and a lot of the push back I get is 'well why do we need to care about this? There's nothing that can be done, if we don't' right, like I don't need to protect personal information what can the commissioners do, and I'm like you know that's actually a very fair point because unfortunately in Canada privacy protection doesn't have that kind of teeth that we see our European or Californian counterparts.

Joyce Yan (she/her), Access & Privacy Manager at College of Physicians and Surgeons of BC

I do wanna ask when you were experiencing things like that where you know that the policy is – that they can't use drones, and they are clearly using drones right in front of you do you believe that there's a gap that exists between the privacy 'on the books' and in practice?

Yes, Yes, definitely, and again I think it kind of speaks to the lack of education and maybe the lack of..... well okay no, on the other hand and I will raise this and maybe other people have said this, and I d – I don't know if any – and I don't even know if this is relevant to your project but we will see privacy invoked where um people wanna hide things which is ridiculous so often times it's like, we- the publics looking for stuff and privacy will be invoked as like 'no this is really, really, important' but it's usually only when there's corrupt – when they're trying to hide corruption or something that will make them look bad, other than that I find that there 's lots – that there's just a complete lack of understanding – well no I think even that first point shows the lack of understanding because I think in many instances where, where entities will invoke privacy their doing it disingenuously to shield themselves, and again their relying on

the lack of understanding of the average person of how our privacy laws and policies should be working,

Meghan McDermott (she/her), Staff Counsel (Policy) at B.C. Civil Liberties Association

as a very knowledgeable expert in the field, do you believe that there is a gap that exists between privacy laws that exist ‘on the books’ lets say and privacy in action?

oh absolutely, and there always has been, you know, and that’s true of any regulatory law to be honest, you know, there’s – there’s a statement of principles in the law, there’s the behaviour of organizations and how they’re implementing that law and enforcing it, and then there’s the reality on the ground, and there’s always a gap between the aspirations in the law and the reality on the ground and that’s true of privacy, as it is every other regulation, and so th- the regulators role is to ensure that, that gap is as narrow as possible

Colin Bennett (Professor/Dr.), Emeritus Professor in Political Science at the University of Victoria.

In other words, when the collection of an individual’s data was brought to attention, students were concerned about the collection but valued engagement with new technology over the perceived burden of allowing their data to be collected.

Professionals were concerned with the regulation of data collection and updating laws to reflect modern technology. As a result of new ways to surveil individuals existing through the use of artificial intelligence, specifically facial recognition, and with the laws around artificial intelligence lagging behind the growth of technology, these points change the way an individual experiences privacy in today’s modern world. Growth in technology, and lack of regulation, causes an individual immense concern over the use of their data in today’s society, as one is unable to clearly navigate between their social and private flows of data. As Zuboff states, “before the birth and spread of surveillance capitalism, it was possible to imagine digital representations of your body as an enrichment of the intimate relationships between a patient and a trusted doctor, a mother and her child, elderly parents and their adult children. As surveillance capitalism overwhelms the digital milieu, that vision has been made ridiculous.”¹⁵⁴ Due to the way that technology has been integrated into society, with individuals being required to engage with it at all levels, the way in which an individual understood the use of their data previously has shifted from distinct notions of one’s digital self and one’s physical self being separate entities, to instead both of these selves joining together to form a collective self referred to by monopolized companies as the data subject.

Privacy and Power:

The data subject in today’s society results in an interesting existence of power dynamics between the individual and private companies, from a hierarchy perspective, private companies are at the top, holding power over the individual at the bottom. This dynamic was prevalent within

¹⁵⁴ Zuboff, S. (2019). The age of surveillance capitalism: The fight for a human future at the new frontier of power (First edition). Public Affairs, 159.

the interviews conducted, where when students were asked if they were concerned about those in positions of power collecting their data, they responded with collective caution, regarding what information they provided to private companies, and a general concern over the use of the data they provided.

Are you concerned about those in positions of power collecting your data?

oh, definitely, yes, I am a person who is very aware of like how corporations and the government they surveil, even though it's illegal the processes that they go about surveiling citizens, and any markers that you have like your ethnicity and yea, the circles you work with, they can like get data on you in that version throughout the internet, and so I'm definitely wary of people in power who control a lot of thee, whats it called like, data capital? or media capital?

Maria (She/her)

I haven't been uncomfortable you know in my life haha about this because I don't think they've you know collect information that I would feel you know uncomfortable giving because you know it's the bank or whatever, or schools, or universities whenever they're asking certain questions, it's not like a private, private question they are asking.

CrimStudent101(She/her)

hmmm I don't mind so much, but like yea but- in some ways I worry about data because like they can – can spread our personal information to the other – other – some organizations like, for example in Japan, some education company sent me some our- email- not email – delivered me some letter to promote the university, now I get some information about a job, but I didn't remember where I fill in my personal data to send this kind of letter so yeah, i'm worried in some ways

Purin (She/her)

yes a little bit, especially for this last year, from last year cuz – from last year this is Artificial Intelligence, AI right, and AI will track my -our information right.

Leo (He/him)

Drawing to attention the level of trust students held towards their own families, and towards private companies. Similarly, privacy experts also shared a collective concern for the way in which their, or other's data was collected and used. This joint concern amongst all interview participants is critical As Nippert-Eng¹⁵⁵ argues fears related to privacy fall into two categories. The first category “individuals who have already witnessed the practical consequences of a particular privacy violation up close.” For example,

when you have solicitor client privilege with the client's you are dealing with, and then now it's-

¹⁵⁵ Nippert-Eng, C. (2010). Islands of privacy. University of Chicago Press, 305.

I protest a lot cuz I care about stuff and I often find I'm being recorded by police officers and I'll even go up and ask them about like why are you recording me, cuz at least in Vancouver they have a rule against using drones to video tape protests, and so I've asked them I'm like 'hey you can't do this with a drone why are you doing it like right here in my face' and they're like – and this is where they have said like 'oh well you're in public, we can record anything in public' and I'm like 'no actually you can't, because your own policy says that you can't use a drone' so – anyway and again this is what leads me to be so cynical that the peopl – they should know better

Meghan McDermott (she/her), Staff Counsel (Policy) at B.C. Civil Liberties Association

Can you tell me about a time where you were worried about your own privacy? Is that all right for me to ask?

yea I mean, always have, but also I've accepted it, I'm aware of it all the time, I know that like there- there's issues but at the same time, I know there's very little I can do about it at this point, so yea, I'm a bit of a realist in that respect, I should probably be doing more but I don't, but yea, no, mostly when I go onto that you've been pawned channel on- online, on the internet and see if my email and passwords have been compromised recently that's probably the most alarming times I've had to deal with privacy issues, outside my profession.

Samantha Delechantos (she/her), Fasken Martineau DuMoulin LLP

As a result, this type of actor believes that the practical consequences of not trying to prevent this from happening are much more onerous than the practical consequences.”¹⁵⁶ The second category relates to, “people who actually act on their privacy fears, though, who seem much less concerned with the practical consequence of a violation and much more concerned with the symbolic consequences of it.” I found this type came up more frequently in my research. For example:

Can I ask, is it okay for you to tell me about a time where you were worried about your own privacy?

oh sure, I mean- you know it it happens all the time, I wouldn't say worried but I'll give you an example, oh lets see.... Can I give you an example of where I made a complaint and things changed?

of course,

Many Years Ago- I don't know if you have been through Vancouver airport and the international terminal to go over seas, well several years ago, I was going to London and went in to buy some duty frees, um some duty free some – bottle of wine and so on for – for my family back there and I was asked to give my passport, and uh I said why do you need my passport ? well we need to check that you are actually who you say you are and that you are actually traveling on an international flight outside the country so I said well I wouldn't be at the international terminal unless I had got an international boarding pass, all you need to do

¹⁵⁶ Nippert-Eng, C. (2010). Islands of privacy. University of Chicago Press, 305.

is to check my boarding pass, you don't need my passport information um anyway, I gave them my passport and it was scanned they had a scanner, and they were collecting everybody's passport information, this is a private company selling duty free goods in Vancouver Airport, you know the kind of thing maple syrup, and booze, and cigarettes, and perfume, anyway when I got back to Canada I wrote a letter to the company – the privacy company, and they said well we need to do that for checking for customs purposes, you know, to make sure that people are not illegally exporting information – goods outside the country, and I said well that's ridiculous – anyway I complained to the privacy commissioner and they got back – they changed their policy so I- that's an example where there's excessive capture of personal data right, excessive capture of personal data which was unnecessary, which was a pain for the employees, you know whenever you buy, you know, some booze, at the airport you know you gotta scan a passport, so it was an imposition on the employees, it was totally unnecessary and they stopped doing it, and that was a case where they stopped doing it very quickly.

Colin Bennett (Professor/Dr.), Emeritus Professor in Political Science at the University of Victoria.

Can you tell me about a time where you were worried about your own privacy? If at all.

you know that's a good question because I'm usually so focused on everyone else's privacy, that I am not usually so focused on our own, we try to keep a very good security and privacy hygiene you know at home, were very careful about what we do with our data, we're very cognizant of where we send our data, I you know, I use google products and that's just the nature of the beast these days and I'm fully aware of the information that they have access to, but I will say this, on social media it's not necessarily my privacy but my kid's privacy that I am very concerned about so I have made it, essentially like a family rule that we do not post kids on any social media channels, if our friends and families wanna see updates of our kids, just send us a message were happy to you know text you a picture of the kids or give you an update on how they are doing but I will not posting children's privacy- children's images and stuff like that online and I try to take as many opportunities as I can to not preach at parents because there is a lot of that already in every other you know sector out there but it's very much of informing them of these are risks to kids privacy – these are real risks

Joyce Yan (she/her), Access & Privacy Manager at College of Physicians and Surgeons of BC

Their symbolic meaning is what makes it well worth the practical trouble of trying to prevent violations.”¹⁵⁷ What is significant amongst these categories is that, no matter the status or understanding of the individual, student, or expert, concerns were the same regarding fears of privacy. Which means that, all interview participants in today's society cautiously engage with privacy regimes, as a result of these fears.

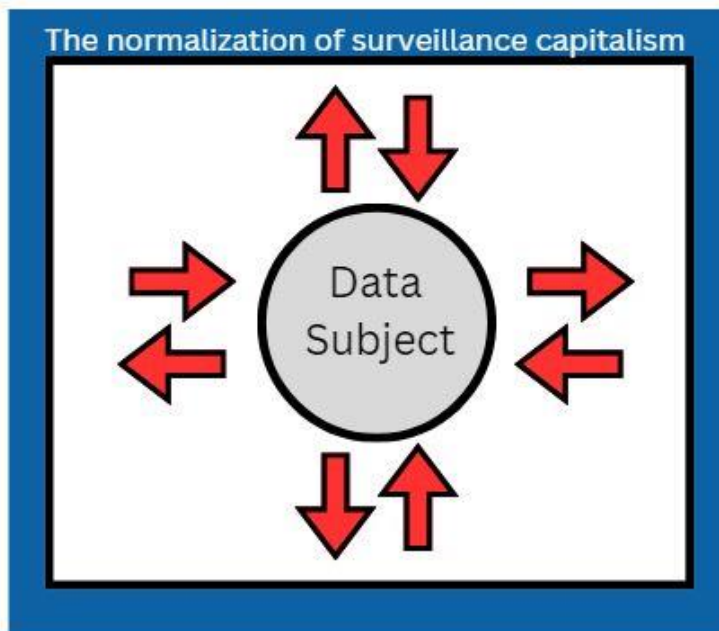
These collective fears can be rationalized and understood previously Foucault argues in 1977 that “Discipline makes possible the operation of a relational power that sustains itself by its

¹⁵⁷ Nippert-Eng, C. (2010). Islands of privacy. University of Chicago Press, 305.

own mechanism.”¹⁵⁸ In today’s context, this argument is still relevant but has shifted, what this means is that, rather than discipline, making relational power possible, discipline is replaced by forced engagement with modern day technology. In understanding the existence of this kind of relationship, one can begin to associate this idea with ideas presented by Harcourt¹⁵⁹ and Zuboff.¹⁶⁰ Harcourt referring to wearables argues that “We strap on the monitoring device voluntarily, proudly. We show it off. There is no longer any need for the state to force an ankle bracelet on us when we so lustfully clasp this pulsing, slick, hard object on our own wrist.”¹⁶¹ Zuboff adds to this by stating, “any actor with an interest in purchasing probabilistic information about our behavior and/or influencing future behavior can pay to play in markets where the behavioral fortunes of individuals, groups, bodies, and things are told and sold.”¹⁶²

Figure: 5

Relational Power: Data Subjects Surveillant Society



163

¹⁵⁸ Foucault, M. (1977). *Discipline and punish: The birth of the prison* (1st American ed). Pantheon Books, 177.

¹⁵⁹ Harcourt, B. E. (2015). *Exposed: Desire and disobedience in the digital age*. Harvard University Press, 124.

¹⁶⁰ Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power* (First edition). Public Affairs, 68.

¹⁶¹ Harcourt, B. E. (2015). *Exposed: Desire and disobedience in the digital age*. Harvard University Press, 124.

¹⁶² Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power* (First edition). Public Affairs, 68.

¹⁶³ This figure refers to the idea the data that Surveillance Capitalism has become normalized in society. Where the data subject has the ability to push back against the collection of their data by companies that practice Surveillance Capitalism, but only as much as those in positions of power will allow them to do so.

All three arguments ask the overarching question, who is able to exercise power over another in society and can they do so without any pushback? Richards took the stance that this needs to change, arguing that “We need to update our tools, develop new ones, and use legal rules to encourage trustworthy information relationships between companies and consumers.”¹⁶⁴ Once an individual becomes aware of this kind of relationship, they quickly begin to feel like change is impossible, this research is one of the many ways that change needs to begin to take place.

Privacy and the need for change:

Within the interviews conducted, there was a consistent theme of education, that students had either been previously educated or had an understanding of the way in which they engage with privacy. The Japanese students interviewed had a more in-depth understanding of privacy laws, in comparison to those students in Canada.

Have you ever been taught about rules or laws that focus on privacy and the protection of personal information? For example, have you learned about them at work, at school, from parents, or when using online applications?

it was actually quite surprising that while I was in elementary school we did have a class, speaking onto privacy.

Maria (She/her)

I'm pretty sure I have, I wouldn't know like off the top of my head of the things that I have read about privacy.

CrimStudent101(She/her)

maybe junior high school or high school so I didn't remember so much, but like, I learned the name of the law in Japan we say, こじんじょうほうほごほう 個人情報保護法 (Personal Information Protection Act) – like haha personal information protection- something like that, yea and I learned what information are considered as the personal information and what kind of government or organisation involved the law

Purin (She/her)

in Japan we, we learn about you know like, those privacy in- from elementary school to junior high school, in social media literacies, or like, those you know, how can I say that, for like scams, or fraud. We learn in elementary school and junior high school.

Leo (He/him)

Thus, ensuring that the Data Subject never gains power over the way their data is used allowing companies to further collect data about individuals.

¹⁶⁴Richards, N. (2022). Why privacy matters. Oxford University Press, 206.

While professionals argue that members of the public need further education in order to properly understand privacy in today's changing context.

When considering ideas about one's protection of digital data in current society, what do you believe is most important for an individual to understand?

I would say is just about how the information about you it's really important to think about how – whether or not it could ever be used to discriminate against you in the future by various different parties.

Meghan McDermott (she/her), Staff Counsel (Policy) at B.C. Civil Liberties Association

About the individual's protection of data? Or that protection of data just generally?

If you are okay with both the-

Okay

-protection of one's data specifically towards that individual and then form a general standpoint

so, individual's I think Education, you know on the individual level is really important, individual's seeking out to educate themselves um an- and to ensure that they are somewhat informed if possible, that information, may not necessarily mean that they agree or consent but atleast having an awareness of it I think is important, from any individual's data protection standpoint.

Samantha Delechantos (she/her), Fasken Martineau DuMoulin LLP

it's a-fundamentally a shift from how we understand what privacy is, it's no longer something we're protecting ourselves in our little bubble that we don't want people access to, which i-is still - I mean - applies to today, but we're more willingly to give pieces of data out to get services and to just understand the implications of what that means and how that needs to be reflected in regulation, how that needs to be reflected in the legal landscape of how we regulate privacy, and personal information

Joyce Yan (she/her), Access & Privacy Manager at College of Physicians and Surgeons of BC

When considering ideas about one's digital data in today's current society, what do you believe is most important that an individual understands?

well increasingly, and unfortunately, when information is captured about individuals online, or through the many other mechanisms that may be connected to the internet through one's car, one's phone, whatever, you're not aware that information is being collected right, you're not aware about it, when you travel around and you have your phone on and you have tracking on, there are many ways how information about you might be tracked, so one is to be aware that, that is occurring, can occur, and two place the settings on your phone in such a way that, you know you've turned off location or tracking, that you've looked at all the privacy choices that you have, when you're online, and inform yourself about those choices.

Colin Bennett (Professor/Dr.), Emeritus Professor in Political Science at the University of Victoria.

Having studied these concepts in detail from various different perspectives, this sort of additional education is needed but is only possible in Canada through joint collaboration. This is not to say that provinces should stop providing resources for individuals to learn about privacy in place of joint collaboration, as there are great resources that exist in my province, such as BC Freedom of Information Privacy Association's resources for teachers or Privacy Matters training for new employees' course. Rather that further education needs to be collaboratively supported, funded, and be public facing. There are examples of organizations that collaborate regarding privacy such as the Right to Information Alliance Canada, whose alliance is a "network of organizations dedicated to helping advance the advocacy of access and transparency issues."¹⁶⁵

What is key is that Canada does not have the same type of public outward-facing resources as in Japan, where the Personal Information Protection Commission Japan¹⁶⁶ offer interactive quizzes, animations, and movies based on privacy, or in the European Union, where the company European Data Rights International¹⁶⁷ set up their privacy website similar to that of an online news media website, Canada does not have this kind of public body. However, the organizations involved with the Right to Information Alliance Canada can potentially result in this kind of public body being formed and resulting in a collective stance towards privacy. There have been examples of this kind of collective stance towards issues in Canada that have proven to be successful, for example, the National Collaborating Center for Environmental Health.¹⁶⁸ Referring to the organizations involved with the Right to Information Alliance Canada each involved organization's mandate can be collectively broken down into four major agreed upon points.

- 1) That privacy should be a given right in Canada,
- 2) That privacy allows for the existence of freedom,
- 3) That there is a need to educate the public about updated understandings of privacy,
- 4) and finally that there exists a lack of funding within the privacy field.

As a result of this collaboration, an end user handbook on how one can understand their privacy rights once a breach, or violation, has taken place similar to the BC Civil Liberties Association's arrest handbook can be made to further increase public understandings of privacy.

¹⁶⁵ Center for Free Expression. (2021). *Right to Information Alliance Canada*. Accessed March 29th, 2024, from: <https://cfe.torontomu.ca/page/right-information-alliance-canada>

¹⁶⁶ Personal Information Protection Commission Japan. (2024). Privacy Awareness Week 2023. Accessed May 2nd from: <https://www.ppc.go.jp/en/aboutus/roles/international/conferences/PAW2023e/>

¹⁶⁷ European Digital Rights. (2024). Together, we can build a people-centered, democratic society!. Accessed May 2nd 2024 from: <https://edri.org/>

¹⁶⁸ National Collaborating Center for Environmental Health. (2024). *About us*. Accessed April 10th, 2024, from: <https://ncceh.ca/about-us>

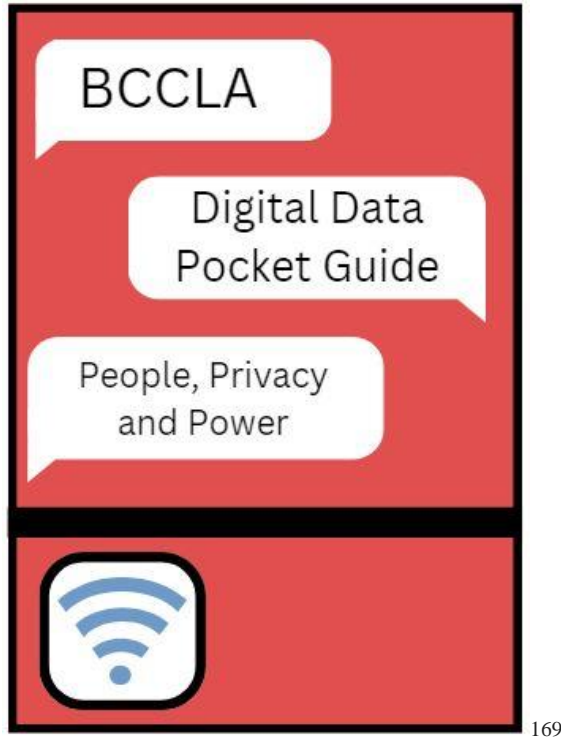


Figure:6

For clarity, this is not to say that the Right to Information Alliance Canada must be the organization to act, instead, this point is to highlight that there is the potential for the existence of this kind of organization in Canada. Due to a joint collaboration, there then exists the potential to form an independent board within Canada similar to the European Data Protection Board¹⁷⁰ that regulates privacy polices to ensure proper compliance amongst all organizations, and individuals across Canada, including political parties who are not currently regulated by privacy laws. Putting in place regular privacy law compliance checks, similar to that of a secret shopper program with penalties that actually rival that of our partners in the European Union, rather than penalties that are non-penalizing as we are currently faced with.

What does this mean in the context of this research question?

The research question posed is concerned with comparing privacy regimes in Canada and Japan and understanding the way in which these regimes in both places shape the way university students understand and experience privacy in their daily lives. As a result, of the conducted interviews there is a clear answer to this question, and still more work that needs to be done regarding other arising questions. Regarding privacy perceptions, it is clear that though cultural

¹⁶⁹ This figure refers to what a user end digital data handbook could potentially look like in the future.

¹⁷⁰ European Data Protection Board. (2024). *The European Data Protection Board*. Accessed March 29th, 2024 from: https://www.edpb.europa.eu/about-edpb/who-we-are/european-data-protection-board_en

differences exist in terms of the way students form their perspectives on privacy, students' perceptions of privacy in both places are relatively similar. When it comes to data subjectivity, both student groups held similar views when it came to the kinds of information being collected. Addressing power dynamics, the student groups collectively were cautious regarding what information they gave to companies and held concern over the way in which the information given is used. When students were asked about education, though there was a difference in the way privacy was taught in Japan compared to Canada, there was similar engagement with privacy regimes within both groups when it came to using and understanding technology.

Referring to these points, though privacy regimes in both places are different both structurally, and in practice, the way in which students understand and experience privacy in their daily lives is the same. This is as a result of the fact that society has moved into a digital age where companies forced integration of technology in society, transcends cultural barriers in a way that was not previously possible, causing concerns around the world regarding privacy to be that of a collective consciousness rather than of separate mind, central to shifting the way an individual acts on issues related to privacy.

Figure:7

Forced Integration of Technology at All Levels of Society:



171

¹⁷¹ This figure refers to the fact that those who have a higher socio-economic status are less controlled by monopolized organizations in today's society, having more freedom. While those who are of middle and especially those who are of lower socio-economic status are subject to intensive monitoring and surveillance.

Thoughts of My Own:

In light of these understandings, it has become clear that there is a need to change the way privacy functions and is understood today. The way privacy functions need to reflect current privacy regimes, and the way privacy is understood needs to be, inclusive, public facing, and accessible. This research addressed student's lived experiences of privacy from two different countries, through the use of interviews, and as a result of understanding the topic from multiple perspectives. This research found that lived experiences of privacy in regard to students from Canada and Japan were different in the way that privacy education was engaged with, yet, when addressing privacy concerns, found that the same concerns were present within both sets of students. This is significant to be aware of as it demonstrates that, even within two different parts of the world, concerns over privacy and the way an individual is surveilled has transcended beyond cultural understanding. This is why this sort of research in my opinion needs to be replicated in other demographics, in order to be generalizable to both Japanese and Canadian society, as the students that were interviewed were younger, of middle class, and had all completed at least one year of university. Taking the same research design used in this study and applying it to a different demographic has the potential to yield different results. Regarding privacy laws and the way these laws function in both places, I believe that the way that Canadian privacy laws function is arguably better than the way Japan's privacy laws function. This is because though having unified privacy laws allows for the replication of the European Union's privacy policies in the country of Japan, having a 'legal patchwork' in Canada allows for the inclusion of all perspectives of privacy to be considered rather than just taking a unified approach potentially missing some key perspectives. Canadian Author Cory Doctorow highlighted that, "Surveillance isn't bad because it lets people manipulate us. It's bad because it crushes our ability to be our authentic selves."¹⁷² Keeping this point in mind, whether one has a collective mentality like Japan, or a separate, mentality like those in Western Society, there is still work that needs to be done if an individual would like the choice to be their authentic self in today's society without fear. There are various ways for an individual to create change in regard to privacy, the easiest way to do so is by asking yourself 'why does privacy matter to me?' Once determined, then ask yourself 'are there organizations that support these values?' For example, if privacy matters to you because you believe it should be a human right, the BC Civil Liberties Association is an organization you would want to become involved with.

These concerns, if properly addressed, will allow those in the future the ability to engage with new technology in a way that both encourages growth, and is properly regulated, so that an individual can engage with companies without concern over the use of their data, and whether or not these companies hold an ulterior motive, when one has no choice but to interact with today's digital society.

¹⁷² Doctorow, C. (2020). *How to destroy surveillance capitalism* (First edition). Stonesong Digital, 112.

Bibliography:

- Bauman, Z., & Lyon, D. (2013). *Liquid surveillance: A conversation*. Polity Press.
- Berreby, D. (2017). *Click to agree with what? No one reads terms of service, studies confirm*. The Guardian. Retrieved March 17th, 2024, from: <https://www.theguardian.com/technology/2017/mar/03/terms-of-service-online-contracts-fine-print>
- Calavita, K. (2010). *Invitation to law & society: An introduction to the study of real law*. University of Chicago Press.
- Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. as it appeared on March 2024 from: <https://laws-lois.justice.gc.ca/eng/const/page12.html#:~:text=7%20Everyone%20has%20the%20right,the%20principles%20of%20fundamental%20justice>.
- Center for Free Expression. (2021). *Right to Information Alliance Canada*. Accessed March 29th, 2024, from: <https://cfe.torontomu.ca/page/right-information-alliance-canada>
- Cohen, Julie E. 2012. *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice*. New Haven, CT: Yale University Press
- Daschuk, M., Brooks, C., & Popham, J. (2020). *Critical perspectives on social control and social regulation in Canada*. Fernwood Publishing.
- Doctorow, C. (2020). *How to destroy surveillance capitalism* (First edition). Stonesong Digital, 112.
- Eichhorn, K. (2019). *The end of forgetting: Growing up with social media*. Harvard University Press.
- European Data Protection Board. (2024). *The European Data Protection Board*. Accessed March 29th, 2024 from: https://www.edpb.europa.eu/about-edpb/who-we-are/european-data-protection-board_en
- Foresight. (2021). *What are the regulations? Also explains the difference between laws and regulations!*. Accessed April 10th 2024 from: <https://www.foresight.jp/gyosei/column/ordinance/>
- Foucault, M. (1977). *Discipline and punish: The birth of the prison* (1st American ed). Pantheon Books.
- Foucault, M., & Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Pantheon Books.
- Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165, <<https://canlii.ca/t/56613>> as it appeared on March 2024.
- General Union. 2016. *A Guide To Privacy Laws In Japan*. Accessed April 9th 2024 from: <https://generalunion.org/4519/#:~:text=We%20can%20start%20with%20the,all%3A%20the%20Constitution%20of%20Japan.&text=Article%2013>.

Goldhaber, M. H. (1997). The attention economy and the Net. First Monday.
<https://doi.org/10.5210/fm.v2i4.519>

Government of Canada. (2024). *About the Anti-terrorism Act*. Accessed April 2nd, 2024, from:
<https://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html#:~:text=On%20October%2015%2C%202001%2C%20ATA,order%20to%20combat%20terrorism.%22%20.>

Haggerty, K. D., & Ericson, R. V. (2000). The surveillant assemblage. *The British Journal of Sociology*, 51(4), 605–622. <https://doi.org/10.1080/00071310020015280>

Harcourt, B. E. (2016). *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press.

Higashizawa, N., & Aihara, Yuri. (2017). Data Privacy Protection of Personal Information Versus Usage of Big Data: Introduction of the Recent Amendment to the Act on the Protection of Personal Information (Japan). *Defense Counsel Journal*, Vol. 84,(Iss. 4.), 1–15.

Hill, K. (2012). How Target Figured Out A Teen Girl Was Pregnant Before Her Father Did. *Forbes*. Accessed April 3rd, 2024 from: <https://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/?sh=78ab9f396668>

Ishii, K., & Komukai, T. (2016). A Comparative Legal Study on Data Breaches in Japan, the U.S., and the U.K. In D. Kreps, G. Fletcher, & M. Griffiths (Eds.), *Technology and Intimacy: Choice or Coercion* (Vol. 474, pp. 86–105). Springer International Publishing. https://doi.org/10.1007/978-3-319-44805-3_8

Jacobson, D., & Mustafa, N. (2019). Social Identity Map: A Reflexivity Tool for Practicing Explicit Positionality in Critical Qualitative Research. *International Journal of Qualitative Methods*, 18, 160940691987007. <https://doi.org/10.1177/1609406919870075>

Japanese Law Translation. (2021). Act on the Protection of Personal Information (Partly unenforced) Act No. 57 of 2003. Retrieved from: <https://www.japaneselawtranslation.go.jp/en/laws/view/4241/en>. as it appeared on April 9th 2024.

Keenan, T. P. (2014). *Technocreep: The surrender of privacy and the capitalization of intimacy*. Greystone Books.

Kirby, S. L., Greaves, L., & Reid, C. (2017). *Experience, research, social change: Critical methods* (Third edition). University of Toronto Press, 12.

Leman-Langlois, S. (2019). Technologies of Surveillance. In M. Deflem (Ed.) *The Handbook of Social Control*, pp. 349-360. Oxford: Wiley Blackwell.

Lyon, D., Bennett, C. J., Steeves, V. M., & Haggerty, K. D. (Eds.). (2014). *Transparent lives: Surveillance in Canada*. AU Press.

- Mathiesen, T. (1997). The Viewer Society: Michel Foucault's 'Panopticon' Revisited. *Theoretical Criminology*, 1(2), 215–234. <https://doi.org/10.1177/1362480697001002003>
- Marwick, A. (2022). Privacy without power: What privacy research can learn from surveillance studies. *Surveillance & Society* 20(4): 397-405: <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/16009/10519>
- Miyashita, H. (2021). Human-centric data protection laws and policies: A lesson from Japan. *Computer Law & Security Review*, 40, 105487. <https://doi.org/10.1016/j.clsr.2020.105487>
- Mizutani, M., Dorsey, J., & Moor, J. H. (2004). The internet and Japanese conception of privacy. *Ethics and Information Technology*; Dordrecht, Vol.6(Iss. 2), 121–128.
- Mozilla Foundation. (2023). *Nissan*. Accessed April 3rd, 2024 from: <https://foundation.mozilla.org/en/privacynotincluded/nissan/>
- National Collaborating Center for Environmental Health. (2024). *About us*. Accessed April 10th, 2024, from: <https://ncceh.ca/about-us>
- Nippert-Eng, C. (2010). *Islands of privacy*. University of Chicago Press.
- Office of the Privacy Commissioner of Canada. 2023. *2022-2023 Annual Report to Parliament on the Privacy Act and the Personal Information Protection and Electronic Documents Act*. Accessed April 9th, 2024 from: https://www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202223/ar_202223/#toc3
- Orito, Y., & Murata, K. (2008). Socio-cultural analysis of personal information leakage in Japan. *Journal of Information, Communication and Ethics in Society*, 6(2), 161–171. <https://doi.org/10.1108/14779960810888365>
- Orwell, G. (2021). *Nineteen Eighty-Four*. William Collins, an imprint of HarperCollins Publishers
- Oxford Reference. (2024). *dataveillance*. Retrieved March 17th. 2024, from: <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095701590>
- Pearce, F., & Snider, L. (Eds.). (1995). *Corporate Crime: Contemporary Debates*. University of Toronto Press. <https://doi.org/10.3138/9781442673489>
- Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <<https://canlii.ca/t/541b8>> as it appeared on March 2024.
- Personal Information Protection Act Regulations, BC Reg 473/2003, <<https://canlii.ca/t/55hr5>> as it appeared on March 2024.
- Privacy Act, RSBC 1996, c 373, <<https://canlii.ca/t/565gt>> as it appeared on March 2024.

Prime Minister of Japan and His Cabinet. (2024). The Constitution of Japan. Retrieved from: https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html. as it appeared on March 2024.

R. v. Bykovets, 2024 SCC 6 (CanLII), <<https://canlii.ca/t/k358f>>, retrieved on 2024-04-09

Repeta, L. & Schultz, D. (2002). Japanese Government Information: New Rules for Access. Retrieved from: <https://nsarchive2.gwu.edu/nsa/foia/japanfoia.html>. as it appeared on March 2024.

Richards, N. (2022). A Theory of Privacy as Rules. Why privacy matters, pp. 45-69. Oxford University Press.

Ron Deibert Professor of Political Science and Director of the Citizen Lab at the University of Toronto in Cory Doctorow's book *Attack Surface*, page 373.

Rosenberg, K. (2014). *Artists Hold Up a Glass to a City's Changing Face*. The New York Times. Retrieved March 17th, 2024, from: <https://www.nytimes.com/2014/04/30/arts/design/hedge-two-way-mirror-walkabout-at-the-met-museum.html>

Richards, N. (2022). A Theory of Privacy as Rules. Why privacy matters, pp. 45-69. Oxford University Press.

Senate of Canada. (2001). *Proceedings of the Special Senate Committee on the Subject Matter of Bill C-36*. Accessed April 3rd, 2024 from: <https://sencanada.ca/en/Content/Sen/committee/371/sm36/01evb-e#:~:text=The%20bill%20includes%20the%20following,deal%20with%20discrimination%20and%20hatred>

The Guardian. (2013). *NSA Files: Decoded What the revelations mean for you*. The Guardian. Retrieved March 17th, 2024 from: <https://www.theguardian.com/world/interactive/2013/nov/01/snowden-nsa-files-surveillance-revelations-decoded#section/1>

Ye, S., & Ho, K. K. W. (2019). Would you feel happier if you have more protection behaviour? panel survey of university students in japan. *Behaviour & Information Technology*, 38(4), 422-434. <https://doi.org/10.1080/0144929X.2018.1544275>

Zuboff, S., & Schwandt, K. (2019). The age of surveillance capitalism: the fight for a human future at the new frontier of power. Profile Books.

Appendices:

Appendix A-1: Definitions of *Privacy* in Law:

Similar provisions

While privacy is a central or core concern under section 8 of the Charter, section 7 also provides residual protection for privacy interests (*R. v. Mills*, [1999] 3 S.C.R. 668, and especially at paragraphs 77-89, 94, 99 and 108, where the court embedded privacy analysis based on section 8 considerations within analysis of a section 7 principle of fundamental justice). The *Canadian Bill of Rights* contains no specific rights to privacy or to be secure against unreasonable search and seizure; but section 1(a) protects a limited right not to be deprived of the enjoyment of property without due process.

A number of international instruments, which are binding on Canada, include provisions protecting aspects of the right to privacy: article 17 of the *International Covenant on Civil and Political Rights*; article 16 of the *Convention on the Rights of the Child*; article 22 of the *Convention on the Rights of Persons with Disabilities*; and article V, IX and X of the *American Declaration of the Rights and Duties of Man*.

See also the following international, regional and comparative law instruments that are not legally binding on Canada, but include provisions similar to section 8 of the Charter: article 12 of the *Universal Declaration of Human Rights*; article 11 of the *American Convention on Human Rights*; article 8 of the *European Convention on Human Rights*; the Fourth Amendment of the *Constitution of the United States of America*.

173

1. Has there been a search or seizure

(i) Types of state conduct to which section 8 may apply

The courts have defined “search” for section 8 purposes as any state activity that interferes with a reasonable expectation of privacy. This can include looking for things that are tangible or intangible, such as spoken words and electronic data (*R. v. Morelli*, [2010] 1 S.C.R. 253), or scents (*Evans* at paragraphs 12-21; *R. v. Kokesch*, [1990] 3 S.C.R. 3).

The interception and recording of a private communication should be considered a search in all circumstances, save where all parties to a conversation expressly consent to the recording (*R. v. Duarte*, [1990] 1 S.C.R. 30 at pages 42-46).

A right to inspect documents as part of an administrative scheme set up by statute to regulate commercial and industrial activity would likely constitute a search (*Comité paritaire de l'industrie de la chemise v. Potash*, [1994] 2 S.C.R. 406 at pages 440-441).

A “seizure” for section 8 purposes is the “taking of a thing from a person by a public authority without that person’s consent” (*R. v. Dyment*, [1988] 2 S.C.R. 417 at 431; *R. v. Colarusso*, [1994] 1 S.C.R. 20 at 58; *R. v. Law*, [2002] 1 S.C.R. 227 at paragraph 15). This includes situations in which a person is required to produce a thing (including information) pursuant to a state compulsion (*R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at 642; *Mills* (1999) at paragraph 77; *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 at page 34; see also *R. v. White*, [1999] 2 S.C.R. 417; *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154; *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425). The power to make copies of documents is analogous to a requirement for production of documents and constitutes a seizure within section 8 (*Comité paritaire* at page 439).

In order to constitute a “seizure”, a “taking” by the state need not be directly from the person whose rights are affected. For example, where a medical professional obtains a bodily sample for medical purposes, disclosure of the sample to police will amount to a “seizure” (*Dyment*; *R. v. Dersch*, [1993] 3 S.C.R. 768; *Colarusso* at page 56). This is so whether the sample is provided pursuant to a police demand, request, or whether it is provided voluntarily. The fact that a person who has acquired lawful possession of information for their own purposes voluntarily discloses the information to the state does not vest in the state a delegated or derivative power to appropriate that information for the purposes of a criminal investigation (*R. v. Cole*, [2012] 3 S.C.R. 34 at paragraph 67).

174

¹⁷³ Canadian Government. (2024). *Section 8- Search and seizure*. Accessed April 10th 2024 from: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art8.html>

¹⁷⁴ Canadian Government. (2024). *Section 8- Search and seizure*. Accessed April 10th 2024 from: <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art8.html>

Appendix A-2: Japan General Union definition of *privacy*:

THE CONSTITUTION AND THE CIVIL CODE

We can start with the strongest legal right of all: the Constitution of Japan.

CHAPTER III (RIGHTS AND DUTIES OF THE PEOPLE)

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Practical Law (uk.practicallaw.com/country/japan) explains:

The constitution technically applies only to the relationship between the state and the individual. However, courts have referred to the standards of the constitutional right to privacy when applying the Civil Code in disputes between private individuals.

The “right to privacy” for individuals is derived from a general right to the “pursuit of happiness”; a right from which invasions of privacy commonly detract.

The Supreme Court generally defines this as a right which prohibits reckless or otherwise arbitrary disclosure of information about an individual's private life.

Article 13 of the Constitution provides that citizens' liberty in private life shall be protected against the exercise of public authority, and it can be construed that, as one of individuals' liberties in private life, every individual has the liberty of protecting his/her own personal information from being disclosed to a third party or made public without good reason.

(See 1965 (A) No. 1187, judgement of the Grand Bench of the Supreme Court of December 24, 1969, Keishu Vol. 23, No. 12, at 1625)

175

¹⁷⁵ General Union. 2016. *A Guide To Privacy Laws In Japan*. Accessed April 9th 2024 from: <https://generalunion.org/4519/#:~:text=We%20can%20start%20with%20the,all%3A%20the%20Constitution%20of%20Japan.&text=Article%2013.>

Appendix B-1: Japan Ordinance defined

Difference between ordinance and law

"Law" means a law enacted by the National Diet.

As stated at the beginning, ordinances are laws enacted by local governments.

Because laws are a higher legal form than ordinances, ordinances must be enacted within the scope of the law.

In other words, as a general rule, ordinances cannot impose stronger regulations than laws (**legal preemption theory**).

In the "Kochi City Ordinary Rivers Management Ordinance Case," dated December 21, 1971, the Supreme Court stated, "Although it is possible to stipulate the management of ordinary rivers in an ordinance, the River Act is more powerful than the provisions of the same law." If laws and regulations impose uniform regulations across the country, regulations cannot be implemented by ordinances.

However, in exceptional cases, such as where the law does not regulate or where the regulation is for a purpose other than that of the law, it is possible to implement unique regulations through ordinances .

176

¹⁷⁶ Foresight. (2021). *What are the regulations? Also explains the difference between laws and regulations!*. Accessed April 10th 2024 from: <https://www.foresight.jp/gyosei/column/ordinance/>

Appendix B-2: Japan Ordinances further defined

Difference between ordinance and regulation

"Regulations", like ordinances, refer to self-governing legislation for local governments, but they can be enacted without a vote of the assembly, and are in the form of laws enacted by the heads of local governments or committees. Says.

Penalties can also be established in the regulations, but only a fine of 50,000 yen or less is imposed as a punishment for disorderly conduct.

Article 15 The head of an ordinary local government may establish rules regarding affairs that fall under its authority, as long as it does not violate laws and regulations.

Section 2 Except as otherwise specified in laws and regulations, the head of an ordinary local government shall, in the rules of the ordinary local government, provide that a fine of not more than 50,000 yen will be imposed on a person who violates the rules. Regulations may be established.

177

¹⁷⁷ Foresight. (2021). *What are the regulations? Also explains the difference between laws and regulations!*. Accessed April 10th 2024 from: <https://www.foresight.jp/gyosei/column/ordinance/>

Appendix C: Interview Guide

Interview Guide:

Privacy in Perspective: Situated Living Experiences of Privacy in Canada and Japan

Note: The order of questions may be changed by the researcher.

Introduction:

- Thank the participant for their time.
- Review their consent form and ask if they had any questions about it
- Remind the participant that they are able to withdraw from the interview at any point.
- Ask for consent regarding being video recorded /or/ having their voice recorded and ask for consent regarding being able to take notes during the interview.
- For Student Participants:
I will not be using real names in my study. I intend to use fake names to protect confidentiality. I will ask you “what is a name that you would like me to use for you?” in addition to, “what pronouns would you like me to use?”
- For professional / background participants: I will ask “Would you like me to identify you by your name and title in my study, or would you like to use a pseudonym?”
- If a pseudonym is to be used, “What is a name that you would like me to use for you? What pronouns would you like me to use?”
- I will also follow up by asking, “Can I identify the organization you work with? If not, that’s ok. Can you help me to think of a generic descriptor that we could use instead?”

Response Prompts:

Q4 – Draw on the consent form as an example.

Q5 – Provide “self-checkout” example. (ie when you use a points card, what data is taken)

Q7 – How do socialize?

Q8 – Provide “Youtube AD” example (ie Youtube

Interview format:

Background:

- 1) Ask for a little bit of background information clarifying the participant’s occupation.
- 2) Ask about how long they have been in the position.

Explain Purpose of the study:

The project involves a comparison of the privacy regimes of British Columbia, Canada and Japan, and an exploration of how differences in these regimes might relate to the ways that university students in both jurisdictions perceive and experience privacy in their everyday lives.

General views on the chosen topic:

- 3) In today's society there are multiple different types of information, some kinds of information one may consider to be personal and other types of information private. What kinds of information would you consider to be the most personal or private?
 - Why do you think that?
 - What is it about _____ that makes it more private?
 - What do you do to keep that information private?
 - Who do you share that information with?
- 4) Have you ever been taught about rules or laws that focus on privacy and the protection of personal information? For example, have you learned about them at work, at school, from parents, or when using online applications?
 - What are some rules and laws that come to mind when you think about privacy?
- 5) What kinds of information do you think are collected by private companies?
 - Why do you think they want that kind of information?
 - Are you concerned about those in positions of power collecting your data?
- 6) Every person who considers the term privacy has their own definition of what the term means. Where do your perspectives of privacy come from?
 - Do we have privacy rights? Can you imagine a scenario in which your privacy rights might be violated?
 - If yes, how do you think you should respond to your privacy being violated?
- 7) Do you use social media in your day-to-day life?
 - What kinds of social media do you engage with?

Specify your topic:

- 8) The collection and selling of how long an individual pays attention to a specific source, usually in this case various media outlets is common amongst apps such as YouTube, Pokémon Go, Instagram, and Tiktok amongst others. Were you aware previously when engaging with these apps, that this sort of data was being collected?
 - Why do you think that this data is being collected?
- 9) Various organizations collect data for their own specific purposes and that data collected is then used by those in power to create a data double, without those in power having to collect any data themselves. Who do you believe should have access to that data?
 - Who do you think should have the ability to be able to decide who has access to this data ?
- 10) Can you tell me about a time where you were worried about your own privacy?
 - Did this experience change your interactions with privacy?

Specific to professionals in the field:

- 11) There are various different privacy laws that exist, what do you believe are the features of a good privacy law?
 - Why do you believe these features addressed are good over others ?
 - Are there specific factors that should apply to public vs. private sector laws?
- 12) When considering ideas about one's protection of digital data in current day society, what do you believe is most important for an individual to understand ?
 - Why do you believe this to be the case?
- 13) As an expert in the field, do you believe a gap exists between the privacy laws that exist 'on the books' and how these laws are applied within society?
 - Can you provide any potential solutions that address how this gap may be addressed?
 - Examples?

Beginning to close the interview:

Thank the interviewer for talking and ask if there are any topics that they wanted to cover that we didn't talk about.

Remind the participant that we are coming up on the 40-minute timer and ask if they would like to consent regarding extending the interview length.

Final interview conclusion:

- Thank the research participant a second time for their time.
- Ask the participant if they have any questions for the interviewer.
- Describe to the participant the ways in which you are going to ensure that their identity remains confidential, and how they would like you to describe their interview.
- Thank you, the participant, again for their corporation and interest.