

China's Pragmatic Privacy Law beyond APEC: Does Generational Culture Matter?

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Abstract

Culture and tradition remain significant influences in China's conception of privacy and implementation of data protection laws. At the same time, the National People's Congress' initiation of privacy protection consideration reveals the prospect of evolving laws emphasizing protection of data privacy based on domestic and international developments. Although a growing literature focuses on Internet filtering and social networking mining, this paper will examine five factors influencing national and international perspectives of China's approach to privacy and data protection: (1) privacy concerns of RFID technology of China's second-generation national identification card (2) personal data leaks of consumer information by banks, insurance companies, and real estate companies as China seeks to build consumer trust in the modern banking and financial system; (3) data protection for citizens of countries engaged with China across borders in electronic commerce and outsourcing; (4) privacy compatibility with multinational and regional organizations in a soft power era; and (5) the changing leadership generations with backgrounds in the "soft sciences" of history, economics, management, business, journalism, and law. These factors may offer useful comparisons for addressing the convergence of an international framework for privacy laws and data protection.

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Introduction

China lacks a legal framework for privacy and data protection, but the term “privacy” (*yinsi*) figured prominently into the culture and tradition of pre-modern history long before the communist regime emerged on October 1, 1949. Discussion of privacy remains in contemporary China with legislative debate, scholarly research, and societal references of a term that is evolving in conceptual definition as it emerges in allusion to personal data protection—a major concern of China today. This paper will present highlights of myriad scholarly analyses of the concept of privacy in China, review preliminary surveys to define privacy in China—as part of a larger project on privacy, culture, and trust— and speculate on the convergence of a framework of privacy and data protection based on five factors: identification technology, consumer information, cross-border transactions, soft power participation, and generational leadership.

Privacy in China: An Evolving Concept

The academic literature on Chinese society and legal studies has explored the prevalence of privacy and its meaning from traditional years to contemporary times, revealing an evolution in the interpretation of privacy in Chinese culture. In an edited volume, Bonnie McDougall and Anders Hansson² examine the permeation of privacy (*si*) in classical literature and society of pre-modern China, focusing primarily on the elite of society. McDougall, a Chinese linguist, delves into the etymology of the terms featured in the private (*si*) and public (*gong*) debate and terms related to privacy as conceptualized in the literature. The glossary of *Chinese Concepts of Privacy* includes a bevy of words from the literary volume related to and often coupled with privacy.³ In a newsletter article advertising a workshop to pinpoint and categorize Chinese concepts of privacy,

² Bonnie S. McDougall and Anders Hansson, ed., *Chinese Concepts of Privacy* (Leiden: Brill, 2002).

³ Ibid., pp. 231-235.

McDougall clarifies the evolution of the meaning and association of *si* from premodern to modern China including its contemporary usage of *yinsi* for privacy.⁴

Jin Yaoji maintains a difference exists between Chinese society, with the family as the core unit, and Western society, with the individual as the basic unit, thus preventing a clear understanding of and reference to individual privacy in the Chinese culture.⁵

Yunxiang Yan's anthropological field study of Xiajia village in the northeastern province of Heilongjiang, offers a major modern study of privacy in the rural family of China. He acknowledges witnessing a transformation of the meaning and perception of privacy in the village over time as he lived there from 1971 until 1979, and returned as a doctoral student in 1989, and subsequently over the years until 1999. Yan finds as privatization developed in the village, family members became cognizant of individual rights yielding more desire for their personal space and privacy.⁶

In his analysis of Chinese legal writings of the 1980s and early 1990s on privacy and legislative privacy protections, Guobin Zhu⁷ contends the scholarly works lacked an understanding of how to distinguish between the terms shameful secret and privacy. Zhu presents a clarification of the two terms—"shameful secret" and "privacy" and suggests a reason for lack of conceptualization of privacy by many people in China through the 1980s. As Zhu explains, the two words—shameful secret (*yinsi*) and privacy (*yinsi*)—were frequently used interchangeably, as they were close in pronunciation except

⁴ Bonnie S. McDougall, "Is There a Chinese Sense of Privacy?" IAS Newsletter Online, 26, May 31-June 2, 2001. Available at <http://www.ias.nl/iiasn/26/regions/26EA8.html>.

⁵ Yaoji Jin (金耀基), "Chinese Understanding of Privacy Right—Chinese Concept of Public, Private," (中國人對隱私權的理解—中國人的“公”“私”觀念) *Ming Bao Monthly Publication* (明報月刊) (February 1994): 56-62.

⁶ Yunxiang Yan, *Private Life under Socialism: Love, Intimacy, and Family Change in a Chinese Village 1949-1999* (Stanford: Stanford University Press). Yan's name is written with the last name last instead of the traditional last name first to reflect the format Yan uses in the publication and the citation format. If a publication uses the last name first, I will maintain the traditional format in the manuscript and use the first name/last name format in the citation.

⁷ Guobin Zhu, The Right to Privacy: An Emerging Right in Chinese Law," *Statute Law Review* 18 (2007): 208-209.

for one tone.⁸ Table 1 presents the two words in Chinese (traditional and simplified), *pinyin* Romanized script, and English. As the table illustrates, both terms—shameful secret and privacy—include the word *si* (私) for privacy or private.⁹

Language Format	Shameful secret	Private matters One's secrets Privacy
Chinese— traditional	陰私	隱私
Chinese— simplified	阴私	隐私
<i>Pinyin</i> Romanization with tones	<i>yin1 si1*</i>	<i>yin3si1*</i>

Table 1 Language Distinction of *Yinsi*

*Each number represents the respective tone: 1 is first tone and 3 is third tone.

One change that may have reduced confusion in using the terms interchangeably and facilitated distinguishing the two terms is in the transition from traditional to simplified

⁸ Zhu makes a key point in identifying the confusion but writes the words in Romanization without giving the difference in tones. The tones are crucial for making the distinction between words. Almost a decade later, Kenneth Neil Farrall acknowledges the same point about the tones of the two words *yinsi* (shameful secret) and *yinsi* (privacy). Farrall gives the tones for each word to account for the difference in pronunciation. He also presents the compound and unit meaning of each word to clarify the difference between *yinsi* (shameful secret) and *yinsi* (privacy). See “Global Privacy in Flux: Illuminating Privacy across Cultures in China and the U.S.,” *International Journal of Communication* 2 (2008): 998 – 999. In this paper, I add the Chinese characters for each term to further clarify the difference between terms.

⁹ The *yin* (陰) in shameful secret refers to “the feminine or negative principle in nature,” moon, and overcast, and it has a “private” connotation as in private parts of the body but not private matters. The *yin* (隱) in private matters refers to “hidden from view; conceal, hide” as the Beijing Foreign Languages Institute’s dictionary committee presents in *The Pinyin Chinese-English Dictionary* (Hong Kong: Commercial Press, 1979).

characters.¹⁰ Note in the rows for Chinese-traditional and Chinese-simplified, the Chinese character for *yin* changed in shameful secret. The Chinese character for *yin* in privacy and private matters did not change. Now, the two words for *yin*, (*yin* in shameful secrets and *yin* in private matters and privacy, respectively) not only have a different sound but also a stark difference in the written form. In literary use of the terms, they are not as likely to get confused, as the characters do not resemble each other as they did before China's change to simplified characters. In the 1970s and 1980s, however, definitions for the term *yinsi* (隱私) for privacy and private matters still included "one's secrets" and "private matters one wants to hide" that can render confusion of shameful secret for the term privacy.¹¹ As time changes, however, internationalization introduces modified meanings or new common phrases that publishers in China add to dictionaries based on the recommendations of academic advisors.¹² The references to privacy in 21st century definitions suggest an evolution of the concept.¹³

According to Zhu, tort cases represented a turning point in the right to privacy literature, expanding the approach to privacy beyond the initial narrow focus of 'shameful secret.' Zhu states, "Legal scholars began to pay attention to the right to privacy in the late 1980s following a number of tort cases which, in part, concerned rights of reputation, honour, and privacy."¹⁴ He maintains the works of Samuel Warren and Louis Brandeis¹⁵ and William Prosser¹⁶ influenced the legal writings in China with scholars referring to privacy as "one aspect of rights of the person," "a legal right," and "the right to private

¹⁰ Mainland China introduced simplified characters in 1956, with revisions in 1964, to improve literacy. The simplified characters, usually based on counterpart traditional characters, have fewer strokes than traditional characters and are, therefore, typically easier to read and write.

¹¹ *The Pinyin Chinese-English Dictionary*, p. 826 and p. 829.

¹² See, for example, "New Chinese Vocabulary in Chinese-English Dictionary," *People's Daily Online*, January 14, 2010. Available at <http://english.people.com.cn/90001/90782/90873/6869252.html>.

¹³ I present examples later in the paper.

¹⁴ Guobin Zhu, p. 209.

¹⁵ Zhu cites this source as Warren, S.D. and Brandeis, L.D. (1980) 'The right to privacy' *Harvard Law Review*, 4: 193-220, reprinted in Wacks, R. (ed.), *Privacy* (Aldershot: Dartmouth, 1993) vol. II, pp. 3-30.

¹⁶ William L. Prosser's article, although not cited in Zhu's footnotes, is "Privacy," *California Law Review* 48 (August 1960): 383-423

life.”¹⁷ Zhu cites evidence of Western influence in one scholar’s argument that outlines “the right of privacy comprises three aspects: personal private matters, personal information and personal areas.”¹⁸

At the time of Guobin Zhu’s article in 1997, the *Constitution of the People’s Republic of China* (1982), central-level legislation, and regulations included eclectic privacy provisions. Article 38 of the Constitution states, “personal dignity of citizens of the People’s Republic of China is inviolable.” The Article prohibits “insult, libel, false charge or frame-up directed against citizens by any means.” Articles 37, 39, and 40, respectively, define “the freedom of persons of citizens,” prohibit unlawful search of a citizen’s home, and stipulate “freedom and privacy of correspondence of citizens.”¹⁹ *The General Principles of Civil Law* (1986) protects the right of reputation.²⁰ Although the document does not offer a privacy provision, “reputation” has been a main aspect of determining privacy. The *Law on the Protection of Minors* (1991) protects the rights and dignity of minors. Article 30 stipulates that “no organization or individual may disclose the personal secrets of minors.”²¹ Article 40 provides for the legal protection of the dignity of delinquent minors. The *Law on the Protection of Rights and Interests of Women* (1992) also protects dignity and reputation. According to Article 39, “women’s right of reputation and personal dignity shall be protected by law. Damage to women’s reputation

¹⁷ Zhu, p. 209.

¹⁸ Zhu, p. 210.

¹⁹ “Constitution of the People’s Republic of China,” Adopted on December 4, 1982. Available at <http://www.constitution.org/cons/china.txt>.

²⁰ “General Principles of the Civil Law of the People’s Republic of China (1986),” Adopted at the Fourth Session of the Sixth National People’s Congress, promulgated by Order No. 37 of the President of the People’s Republic of China on April 12, 1986, and effective as of January 1, 1987. Available at <http://en.chinacourt.org/public/detail.php?id=2696>.

²¹ “Law of the People’s Republic of China on the Protection of Minors (1991),” Adopted at the 21st Meeting of the Standing Committee of the Seventh National People’s Congress on September 4, 1991 and promulgated by Order No.50 of the President of the People’s Republic of China on September 4, 1991. Available at <http://www.china.org.cn/english/government/207411.htm>.

or personal dignity by such means as insult, libel and giving publicity to private affairs shall be prohibited.”²²

Zhu asserts the legislation has not resulted in privacy treated as an independent right. Cases involving privacy have tended to be judged based on the tort law of reputation rather than privacy alone.²³ In the case of tort of reputation, the personal invasion is false and involves libel or slander in damaging the reputation, personal dignity, or honor. In the tort of privacy, on the other hand, the personal information is obtained illegally and disseminates publically aspects of the person’s private life, and interferes with the person’s private life thus disturbing the peace of mind. The two torts are different. Disseminated matters in tort of reputation are false and the matters revealed in tort of privacy are real. The damage from the tort of reputation can be stopped and the reputation restored. The damaging effects of the tort of privacy, however, cannot be reversed after disclosure of personal information.²⁴

Rather than focus on legislation and regulation, McDougall²⁵ views the reactions in the 1970s and 1980s to the tumultuous political upheaval of the Cultural Revolution (1966-1976) and Tiananmen Square of 1989 as representing turning points in transforming the meaning of privacy. She introduces the aspect of domestic environmental factors influencing the perception of privacy and consideration of life outside of politics. In

²² Law of the People's Republic of China on the Protection of Rights and Interests of Women, Adopted at the Fifth session of the Seventh National People’s Congress on April 3, 1992. Available at <http://en.chinacourt.org/public/detail.php?id=123>.

²³ See Jingchun Cao, “Privacy Special Issue: Protecting the Right to Privacy in China,” Victoria University of Wellington Law Review 36 (October 2005), pp. 6-9 for examples of cases demonstrating the difference.

²⁴ Zhu, p. 212-213. With the advent of the Internet, however, the damage of reputation is hard to reverse in many cultures. See Daniel J. Solove, *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*, (New Haven: Yale University Press, 2007), especially shaming on the Internet, pp. 76-102. Now, in China, a form of shaming and vigilantism, which may not always have the facts to substantiate online character attacks on individuals and is not always based on true information, is the human-flesh search engines (*renrou sousuo*). See Anne S. Y. Cheung, “China Internet Going Wild: Cyber-hunting versus Privacy,” *Computer Law & Security Review* 25 (2009): 275-279.

²⁵ Bonnie S. McDougall, “Privacy in Modern China,” *History Compass* 2 (2004): 1 – 8. McDougall, a scholar of Chinese modern literature, studied at Peking University in 1958. She has written on privacy in pre-modern and modern Chinese society.

China, McDougall maintains, writers' explorations of private lives led to more openness in writings about sexual experiences, but the focus on privacy in literature yielded increase debate on the topic and public appreciation for privacy.²⁶

During this time of change in people's perception of privacy, McDougall and Lü Yao-Huai²⁷, in separate analyses, assert external relations began to influence developments of privacy in China. Both scholars identify China's entrance into the World Trade Organization in 2001, and the country's need to become part of the international conventions and legal framework.²⁸ Another game-changing factor both McDougall and Lü indicate as influential in the development of privacy in China is the proliferation of the Internet and all that it entails.

As McDougall wrote:

The growth of the Internet presented new problems, as also widespread concern with data protection, surveillance technology and information technology in general.²⁹

Lü comments:

The Internet provides a convenient environment for citizens' communication and business. But at the same time, because of the

²⁶ McDougall, p. 6.

²⁷ Lü Yao-Huai, "Privacy and Data Privacy Issues in Contemporary China," *Ethics and Information Technology* 7 (2005): 7-15. Lü's article offers an analysis of privacy in China similar to Zhu's 1997 thesis.

²⁸ See Lü, p. 13; and McDougall, p. 6. Although other scholarly writings examine the influence of China's entry into the World Trade Organization on domestic developments, including the legal framework, this section highlights literature on privacy in China. For other studies, see, for example, Yuka Kobayashi, "The Impact of the World Trade Organization on the Chinese Legal System," *The Foundation for Law, Justice and Society in Collaboration with The Centre for Socio-Legal Studies*, University of Oxford, 2007. Available at <http://www.fljs.org/uploads/documents/Kobayashi%231%23.pdf>; Qingjiang, China and the World Trade Organization: A Legal Perspective (Hackensack, NJ: World Scientific Publishing Company, 2002); and Kong Esther Lam, *China and the World Trade Organization: A Long March toward the Rule of Law*, New York: Kluwer Law International, 2009).

²⁹ McDougall, p. 6.

anonymity and new flexibility of online behaviors, the network also become[s] a convenient tool for the spread of privacy. But as in other nations, there is a great deal of problems on the network in China, e.g., personal data is collected and released at will, commercial secrets are stolen and revealed, etc.³⁰

While McDougall views Chinese citizens as looking within to reassess the realms of politics and their role in politics, Lü highlights a connection between privacy and social development and privacy and stability. According to Lü, the scholars in his review essay maintain that privacy protection is important for people's perception of safety and, in turn, affect social development, social order, and national interests.³¹

Both McDougall and Lü anticipate further dialogue on privacy that would incorporate contemporary developments in domestic (internal) and international (external) factors and move beyond traditional culture. As McDougall contends:

In the face of these political and technological changes, Chinese and Western scholars are now engaged in determining the origins, range and contents of Chinese concepts of privacy, including but also going beyond spoken and written etymologies, and giving due weight to changes over time and place and with respect to age, gender, and social status. These philosophical, historical and sociological investigations are significant contributions to international dialogue on the universality of human rights law.³²

Lü anticipates a refinement of privacy protection laws that may yield “data protection law” with an ‘insider’ system for “domestic privacy protection” and an ‘outsider’ system for “privacy protection regarding those living abroad.”³³ He continues:

³⁰ Lü, p. 9.

³¹ Lü, pp 11-12.

³² McDougall, p. 6

³³ Lü, p. 13.

Thus, the legal system of privacy protection that is likely to emerge in China will differentiate between home and abroad, namely: in activities involving foreign countries, privacy protections will abide by international law – while in domestic affairs, the privacy protection will abide by municipal law. These two have different standards, as we have seen.³⁴

In speculating on the future of privacy protection law in China, Lü initially asserts culture will play a role as privacy becomes more refined domestically. He states:

“...keeping in mind the distinctive cultural background of China, the domestic law may particularly emphasize privacy protection consonant with more general Chinese ideas and values... .”³⁵ At the same time, however, he foresees an expansion in the respect for privacy in Chinese society and a decline in “the influence of traditional Chinese culture on conceptions of privacy... .” with the increasing “development of globalization and the Chinese opening up to the international community... .”³⁶

Chen Yang and Randolph Kluver’s study of personal privacy and information technology identify technologies, market-oriented economic developments, and changing social norms in Chinese culture as having a shifting impact on legal regime changes in China.³⁷ The authors, however, remind us of the sharp political oscillation of the Cultural Revolution and its severe violation of privacy. But Yang and Kluver doubt if such a severe political crackdown would ever occur, again, and impede change given China’s forward direction of modernization. Another possible impediment, according to Yang and Kluver, is the state’s strong centralized control over the population. Demand for

³⁴ Ibid. Robert Putnam’s two-level analysis would allow a closer assessment of interactions between the two “levels of privacy protections.” See “Diplomacy and Domestic Politics: The Logic of Two-Level Games” *International Organization* 42 (1988). Jane Winn applies Putnam’s “two-level game” analysis to study the development of information, communication and technology (ICT) standards at the global and national/regional levels. See Jane K. Winn, “Globalization and Standards: The Logic of Two –Level Games,” *I/S: A Journal of Law and Policy for the Information Society* 185 (June 2009).

³⁵ Lü, p. 13.

³⁶ Lü, p. 14.

³⁷ Chen Yang and Randolph Kluver, “Information Society and Privacy in the People’s Republic of China,” *Journal of E-Government* 2 (2005): 85 – 105.

privacy could conflict with state control. Technology will not directly yield extreme social changes in a system, but it can facilitate social shifts.

Although preliminary, Yang and Kluver speculate on a convergence of privacy between China and other societies based on the permeation of the culture of information technologies. As the authors assert:

“...as Chinese society undergoes these significant changes, the values and assumptions that have traditionally defined the nation and the state are also likely to be called into question and redefined. It is likely that what the state recognizes as ‘state’s interests’ are likely to be rearticulated, and it could be that China begins to articulate these lines more compatible with contemporary Western assumptions. This is not to say China is becoming “westernized,” as much as it is to say that *advanced societies do embody certain cultural configurations* [italics mine].³⁸

Yang and Kluver admit their analysis, in its preliminary stages, cannot predict there are cultural dimensions of values of an information society that will influence a country’s culture, but they argue it is unlikely that a society can incorporate characteristics of “an advanced information society with no significant changes to its value framework and legal regime... .”³⁹

Can a decline in traditional culture, proliferation of information technologies, and expansion of privacy scope suggest a convergence of the privacy protection in China tending toward an international or regional framework of privacy? To begin to answer this question, this paper explores three academic surveys on privacy in China that reveal refinement of the definition and perception of privacy in China in the era of information technology.

³⁸ Yang and Kluver, p. 101.

³⁹ Yang and Kluver, p. 102.

Privacy in China: Qualitative and Quantitative Research Surveys

China has increasingly become part of local, national, and international surveys and scholarly research projects on privacy to gain an understanding of the meaning of privacy, perception of privacy, attitudes toward privacy, and regulation of privacy at various levels of Chinese society. This section of the paper examines three academic studies focused on the conceptualization and perception of privacy in the domestic setting—by no means an exclusive representation of the research conducted on this topic.⁴⁰

At a time when China lacked systematic surveys on the conception of privacy, McDougall conducted a preliminary study of the topic by interviewing 162 undergraduate students in a large provincial university in the central-southern region of China in June 2000.⁴¹ McDougall acknowledges the results of the open-ended survey of students do not yield findings to extrapolate casual relations nor make general inferences about privacy and related variables. This move from theoretical studies to survey analysis, however, provides insight of refinement of the perception and scope of privacy in China. McDougall contends students seemed aware of privacy as a legal right and as a measure of values. Some of the respondents referenced newspaper reports on children suing their parents for reading their diaries, current privacy laws in the country, and a popular English book on privacy.⁴²

McDougall's anecdotal findings suggest the students deemed privacy as respected and important in China, appreciated privacy in their own lives, viewed Western influence as increasing the awareness of privacy in China, and anticipated further focus on privacy in

⁴⁰ In the section of the paper on the five factors influencing privacy developments in China, I will incorporate other national surveys on privacy and examine global studies on privacy and related topics that include China.

⁴¹ Bonnie S. McDougall, Research Note—"Privacy in Contemporary China: A Survey of Student Opinion, June 2000," *China Information* 15 (2001).

⁴² McDougall, p. 141.

China.⁴³ McDougall gleaned from this preliminary study the need for a more in-depth study of privacy to explore the points of agreement and variation with perception of privacy in Western societies and to gain a global understanding of the term in contemporary times.⁴⁴

Shengming Tang and Xiaoping Dong's cohort survey of 338 junior and senior-high school students and their parents in Shanghai⁴⁵ marks a turning point in the study and conceptualization of privacy in China in four major respects: (1) family urban study, (2) theoretical framework, (3) generational differences, (4) age disparities, and (5) privacy perception. First, Tang and Dong's quantitative study seeks to fill a void in family privacy, especially focusing on privacy of children and their families in urban China. Ying-Keung Chan's previous study of family privacy in China focused on Hong Kong but not Mainland China.⁴⁶ Yan's anthropological study of Xiajia village revealed family privacy began to shift from the family as a unit to the individual during his years staying in the countryside.⁴⁷ Tang and Dong's study will allow for useful comparative studies of a different political system in the Chinese culture and a rural-urban comparison, which is significant given the urban-rural economic discrepancies in China and the links of views on privacy to economic stability.

Another significant feature of Tang and Dong's study is the authors' use of a theoretical framework of privacy that stems from "Western culture."⁴⁸ Tang and Dong offer differing viewpoints from previous Chinese scholars that contend the concept of

⁴³ The educational disciplines of the students could have influenced their views on Western influence. The 162 students consisted of 86 English majors, 61 Foreign Trade or Tourism majors, and 15 auditors. The first two categories of students likely had exposure to Western culture through foreign students and faculty, newspapers, popular culture, and commercial material.

⁴⁴ McDougall, p. 146.

⁴⁵ Shengming Tang and Xiaoping Dong, "Parents' and Children's Perceptions of Privacy Rights in China: A Cohort Comparison," *Journal of Family Issues* (2006).

⁴⁶ Ying-Keung Chan, "Privacy in the Family: Its Hierarchical and Asymmetric Nature," *Journal of Comparative Family Studies* (2000): 1-17.

⁴⁷ I previously discussed Yan's village study, *Private Life under Socialism: Love, Intimacy, and Family Change in a Chinese Village 1949-1999*.

⁴⁸ Tang and Dong use the term "Western culture."

individual privacy is not part of traditional Chinese culture.⁴⁹ The authors' premise of their study, as a contrasting viewpoint, is that individual privacy exists in China. Tang and Dong use Karyn McKinney's model to operationalize family privacy into three spheres of perceptions of privacy rights: spatial, physical, and mental.⁵⁰ And the authors rely on Chan's definition of individual privacy from Alan Westin.⁵¹ Of Westin's four states of privacy: solitude, intimacy, anonymity, and reserve, Chan uses all but anonymity as applicable to China. Tang and Dong cite Chan's exclusion of anonymity, 'Only anonymity, the capacity to remain unrecognized in a public, does not apply to the Chinese conception of privacy.'⁵² In Chan's article, he offers an additional statement as follows: "The reason for this is that anonymity has never been regarded as a problem in Chinese society because people prefer to be recognized and praised for their conduct or achievements by fellow clansmen and neighbours."⁵³ Westin, however, states the full premise of anonymity as:

The third state of privacy, anonymity, occurs when the individual is in public places or performing public acts but still seeks and finds, freedom from identification and surveillance. He may be riding a subway, attending a ball game, or walking the streets; he is among people and knows that he is being observed; but unless he is a well-known celebrity, he does not expect to personally identified and held to the full rules of behavior and role that would operate if he were known to those observing him. In this state the individual is able to merge into the 'situation landscape.' Knowledge or fear that one is under systematic observation in

⁴⁹ For example, Yaoji Jin, op.cit.

⁵⁰ Tang and Dong, p. 290.

⁵¹ Alan F. Westin, *Privacy and Freedom* (New York: Atheneum, 1967). Tang and Dong and Chan cite the 1970 edition. The authors also refer to Harold Traver's five aspects of people in Hong Kong: solitude, disclosures privacy, escape, domestic privacy, and reserve. Domestic privacy is the main aspect of the concept of privacy in Hong Kong, as it controls the social interactions and allows for solitude. Harold Traver, "Orientations toward Privacy in Hong Kong," *Perceptual and Motor Skills* 59 (1984): 635-644. See Tang and Dong, p. 289.

⁵² Tang and Dong, p. 289.

⁵³ Chan, p. 2.

public places destroys the sense of relaxation and freedom that men seek in open spaces and public arenas.⁵⁴

Westin describes another form of anonymity as:

“...the publication of ideas anonymously. Here the individual wants to present some idea publicly to the community or to a segment of it, but does not want to be universally identified at once as the author—especially not by the authorities, who may be forced to take action if they ‘know’ the perpetrator. The core of each of these types of anonymous action is the desire of individuals for times of ‘public privacy.’⁵⁵

Westin categorizes the anonymity state of privacy, along with solitude, intimacy, and reserve—which Tang and Dong use—as applying to democratic states.⁵⁶ He maintains the political system shapes the “balance of privacy,” which he emphasizes by comparing totalitarian and liberal democratic systems. Liberal democracies, according to Westin’s interpretation of liberal democratic theory, allow a life of substantial interests beyond politics and includes such as literature, arts, and sports.⁵⁷ As earlier stated, McDougall’s acknowledgement of the Cultural Revolution and Tiananmen Square as domestic turning points that influenced people’s perception of privacy and their thoughts of life away from the realm of politics will allow a closer look at China’s convergence toward Westin’s liberal democratic states. Lü, cited in a previous section, emphasizes the anonymity of the Internet and the resulting behaviors may force increased privacy to protect the Internet environment for the generation of citizens transacting business and communication. This paper asks if generation matters in changing the perception and scope of privacy in China.

⁵⁴ Westin, *Privacy and Freedom* (New York: Atheneum, 1967), p. 31.

⁵⁵ Westin, p. 32.

⁵⁶ Westin, especially chapter 2.

⁵⁷ Westin, p. 24.

Tang and Dong prepare us for questioning the influence of generations as the authors find generational differences in their research. The authors' study of family privacy reveals that a strong desire for individual privacy is related to generations.⁵⁸ Not only did children desire more individual privacy than their parents but also senior high school students indicated a higher individual privacy orientation than junior high school students. Three years older than the junior high school students, the senior students sought more autonomy over their lives and personal space for their enjoyment, and "more control over their own personal information."⁵⁹

Gender differences in privacy perception, a fourth feature of Tang and Dong's research, surfaced in some of the information management parts of the study. The findings indicate male children value privacy less and male parents respect privacy values more.⁶⁰ Another finding suggests two main differences in the perception of privacy: one is privacy as secrecy or something to hide and the other is privacy as the right not to disclose personal information. This privacy-secrecy distinction is a fifth major aspect of the study.⁶¹ Tang and Dong refer to existing literature to clarify that privacy and secrecy have some overlapping features, but a study must distinguish the meanings in the operationalization of privacy for research.⁶² Tang and Dong recommend cross-cultural studies of privacy to gain an understanding of the of cultural-specific and cultural-universal features of privacy.⁶³

⁵⁸ Tang and Dong, p. 296. This study adds to the growing studies on privacy and generations and the future of cross-cultural studies of privacy perception and privacy risk among generations. See recent generational studies such as Seounmi Youn and Kimberly Hall, "Gender and Online Privacy among Teens: risk Perception, Privacy Concern, and Protection Behaviors. *CyberPsychology & Behavior* 11 (2008): 763-765; and Christopher Hoofnagle, Jennifer King, Su Li, and Joseph Turow, "How Different are Younger Adults from Older Adults When It Comes to Information Privacy Attitudes & Policies?" Working Paper Series, Social Science Research Network (April 2010). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1589864.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Tang and Dong, pp. 297-298.

⁶² Tang and Dong, p. 288.

⁶³ Tang and Dong, p. 298. Cross-cultural studies have emerged in the study of privacy such as the Globalization of Personal Data Projects of 2006 and 2008, which the paper will incorporate in the section on the five factors influencing privacy and data protection in China. This section will also integrate national studies of China's leading social science think tank, the Chinese Academy of Social Sciences.

Kong Lingjie's study of online privacy and commercial Websites in China gives a perception of privacy that relates to personal data collection and questions the role of national borders in creating a legal privacy framework.⁶⁴ The survey stems from a China Internet Information Center (CNNIC) study indicating consumers are opting out of shopping online because of privacy infringement. According to CNNIC, consumers' concern about online privacy infringement has threatened the success of business to consumer and consumer to consumer online interactions in China.⁶⁵

The survey sample consists of 216 commercial Websites of three target populations of Websites: commercial, business to consumer, and randomly selected top Websites. Kong does not include a conceptualization of privacy, but he refers to personal data practices to assess privacy policies. The personal data practices are divided into three categories for measurements: (1) the privacy policies of the Websites in collecting personal data including personal identifying information, de-identifying information,⁶⁶ and email to measure the amount of personal data collection; (2) the Websites' posting of a comprehensive privacy policy; icon linking the policy, and posting a discreet privacy notice to measure personal data protection awareness; and (3) the Websites' privacy disclosure through posting of privacy policies and statements to measure the fulfillment of the four key principles of fair information practices—notice, choice, access, and security.⁶⁷

Kong's findings reveal that almost 100 percent of the Websites collect personal data but do not offer protection of personal data. The author acknowledges various countries that have moved forward on legislation to protect personal data, and he anticipates a detriment

⁶⁴ Lingjie Kong, "Online Privacy in China: A Survey on Information Practices of Chinese Websites," *Chinese Journal of International Law* 6 (2006): 157-183. Kong's study is part of a national research project, *The Internet Society and International Law*, at Wuhan University.

⁶⁵ "Report on the Development of the Internet in China," *China Internet Information Center*, 2006.

⁶⁶ Kong defines personal identifying information as that allows targeting an individual such as name, postal code, address, email, telephone number, ICQ, and MSN messenger number. Non-identifying personal information consists of demographic data such as age, gender, income level, educational level, and personal preference information such as interests, hobbies, shopping behavior. See p. 161.

⁶⁷ Lingjie Kong, p. 161-164.

to China's economy if the country lags behind on this development. Foremost, Kong highlights, is the negative impact a lack of personal data protection online could have on e-commerce. Potential users will lack trust in the system. He warns that self-regulation of online privacy on Websites in alleviate consumers' growing concern about their online privacy.⁶⁸ According to Kong, in the domestic and international environment, China needs to increase self-regulation, legislation, consumer awareness, and privacy enhancing technologies (PETs). Kong recommends PETs to address the lack of protection as he contends technology is needed to correct personal data protection— an issue that developed out of information technology.

Five Factors of Influence: Areas of Focus for Future Studies

Based on a review of various studies on privacy in China, we can glean five recommendations regarding theoretical framework, technologies' role, public trust, two-level analysis, and generational impact for designing and implementing future studies on privacy in China. One recommendation is that existing theoretical frameworks in the privacy literature may offer useful, not always conflicting, applications for the study of China. As Tang and Dong decided in selecting three of Westin's four states of privacy and McKinney's spheres of privacy for an analysis of their cohort study of privacy in Shanghai, China, the theoretical privacy framework designed for one culture may be appropriate but require adjustments for another evolving political culture. Nevertheless, other studies for years in the social sciences have adapted and modified theoretical frameworks to study other cultures and societies. Culture will always matter in inter- and intra-comparisons of any political system. In China, as in other countries, there are various subcultures to consider in interpreting privacy. Subcultures affecting the scope of privacy or people's perception of privacy also exist in the United States, Europe, Australia, and Africa to name a few different locations. We may find privacy used in a setting that does not consider the variety of perceptions based on the subcultures.

⁶⁸ Kong, p. 173.

In this paper, I, too, rely on existing theoretical literature in developing a conceptualization of privacy to explore China's privacy and data protection. I focus on information privacy, emphasizing "the collection, use, and disclosure of personal information" rather than 'decisional privacy,' which refers to "the freedom to make decisions about one's body and family."⁶⁹ Of Jon Mills' four spheres of privacy—autonomy, personal information, property, and physical space—I select appropriate features of the personal-information sphere.⁷⁰ The definition of personal information comes from Kong's characteristics with distinction between information and data according to Raymond Wacks, "'Data' become 'information' only when they are communicated, received, and understood. 'Data' are therefore potential 'information.'" ⁷¹

A second recommendation in the literature on privacy in China is to examine the role of technologies in effecting change in privacy debate, protections, and laws. Often countries have welcomed the advancement of technologies as a strategy for leapfrogging further into economic and technological development without the expense of dismantling old infrastructure. The technological advances, however, raise concerns about cultural and legal conflicts that accompany the new strategies.⁷² China's president Hu Jintao announced the push for scientific innovation at the 17th Chinese Communist Party Congress in 2007, which is part of the country's five-year development.

The literature on privacy and China also recommends a closer review of public trust. This third suggestion refers not only to public trust in online commercial transactions but

⁶⁹ Daniel J. Solove and Paul M. Schwartz, *Information Privacy Law* New York: Aspen Publishers, 2008, Third edition, p. 1.

⁷⁰ Jon Mills, *Privacy: The Lost Right* (New York: Oxford University Press, 2008).

⁷¹ Raymond Wacks, *Personal Information: Privacy and the Law*, Oxford: Clarendon Press, 1989, p. 25.

⁷² I have addressed this issue of leapfrogging and infrastructure in a previous conference paper on the use of cyberspace for educational advancement in developing countries and the issue of leapfrogging and the cultural and technological conflicts in a case study on Malaysia's MyKad, the multi-purpose national identity smart card. See "International Collaborative Education Twenty-first Century," paper presented at the International Conference on Higher Education in the 21st Century: Mission and Challenge in Developing Countries, Hanoi, Vietnam, May 14-17, 1996; and "Smart Cards for Paperless Transactions: Facilitation of e-Government or Threat to Security?" In Terrel Rhodes, ed. *The Public Manager Case Book: Making Decisions in a Complex World* (New York: Sage Publications, 2002).

also a sense of public safety that will enhance feelings of stability and, in turn, foster the country's economic growth. This concern for privacy must address trust of the collection, use, and disclosure of information of citizens and of clients and companies in cross-border transactions with entities in China.

A fourth recommendation from the literature is to explore the influence of the domestic and international sectors on changes in privacy. Scholarly works outline the significant influence of inner (domestic) and outer (international) environments in the privacy developments of privacy in China. Assessing a two-level approach may help us to understand the likelihood of two privacy legal frameworks in China: a domestic and an international framework. We must also include other levels for a multi-level approach given the relevance of the international, regional, national, and subnational levels in privacy and personal data protection.

A fifth recommendation we can glean from the literature, especially from McDougall and Tang and Dong, is to review the role of generation in privacy in China. Although the researchers do not address the leadership generation, McDougall and numerous works in the social sciences emphasize the political oscillation of movements such as the Cultural Revolution and Tiananmen Square as having an impact on citizens in moving away from the realm of politics and more to other settings. The movements have involved the people and official leaders, thus, it is crucial to have an understanding of the influence of leaders in China in the development of privacy.

A growing school of thought in Chinese politics examines the characteristics of China's leadership generations and the anticipated effect of these leadership cohorts on the country's development.⁷³ As China's fifth generation prepares to assume the helm in

⁷³ As this literature is a vast amount for a footnote, I will highlight only several works. See (in some cases listen to audio) Zhiyue Bo, "China Starts Grooming its Sixth Generation Leaders," Singapore: East Asian Institute, National University of Singapore, December 9, 2009; *Changes in China's Political Landscape: The 17th Party Congress and Beyond*, (Washington, DC: The John L. Thornton China Center, The Brookings Institution, April 12, 2007; Cheng Li, "China's Midterm Jockeying: Gearing up for 2010," Washington, DC: Brookings Institution,

2012 and prominent future leaders of the sixth generation have surfaced as provincial-level leaders, we should speculate on the influence this change could have on privacy and personal data protection in China. The theoretical framework on the influence of leaders of China stems from Valerie Bunce's study of the effect of new leaders on policy process and emerging priorities.⁷⁴ She describes leadership succession as a barometer of power and advises studying this change as a dependent variable that influences operation of the political system.⁷⁵ We can ask how current and anticipated leadership generation will affect the development of privacy and personal data protection in China, especially given the emergence of officials from non-technical fields.

Five Factors of Influence

Factor One: RFID Technology of China's Second-generation National Identification Card⁷⁶

A growing number of studies on technology and China focus on Internet filtering and censorship and social network mining for government control. The studies have enhanced the understanding of the Internet and the effectiveness of China's Great

http://www.brookings.edu/~media/Files/rc/papers/2010/02_china_leadership_li/02_china_leadership_li.pdf; Cheng Li, "China's Team of Rivals," *Foreign Policy*, (March/April 2009); Alice L. Miller, "Institutionalization and the Changing dynamics of the Chinese Leadership Politics," in Cheng Li, ed., *China's Changing Political Landscape: Prospects for Democracy* (Washington, DC: Brookings Institution Press, 2008); Yu-Shan Wu, "Jiang and After: Technocratic Rule, Generational Replacement and Mentor Politics," in Yun-han Chu, Chih-cheng Lo, and Ramon Myers, ed., *The New Chinese Leadership: Challenges and Opportunities after the 16th Party Congress* Cambridge: Cambridge University Press, 2004; Suisheng Zhao, "The New Generation of Leadership and the Direction of Political Reform after the 16th Party Congress," in Yun-han Chu, Chih-cheng Lo, and Ramon Myers, ed., *The New Chinese Leadership: Challenges and Opportunities after the 16th Party Congress* Cambridge: Cambridge University Press, 2004.

⁷⁴ Valerie Bunce, *Do New Leaders Make a Difference?: Executive Succession and Public Policy under Capitalism and Socialism* (Princeton, NJ: Princeton University Press, 1981). Bunce's analysis has been used as a model in other studies of non-democratic regimes with strong leadership influence over public policy. See, for example, Fatos Lubonja, "Privacy in A Totalitarian Regime," *Social Research* 68 (Spring 2001): 237 – 254.

⁷⁵ Valerie Bunce, p. 222.

⁷⁶ Although the heading is radio frequency identification (RFID), it symbolizes China's forward-looking strategy on various technologies, some of which I will include in this section.

Firewall.⁷⁷ Other studies have begun to examine the use of information technologies, particularly the Internet, in challenging political cultures and moving toward an international or regional framework of privacy.⁷⁸ And studies such as Kong's survey of online privacy⁷⁹ in China and cyberspace users in cyberspace⁸⁰ bring attention to the need to explore privacy of the Internet. Online activities continue to increase ranging from e-government to shopping.⁸¹ The concern for privacy and personal information will heighten with the increase in China's number of Internet users as the Internet Corporation for Assigned Names and Numbers (ICANN) moves forward with future top-level non-Latin top-level domain names to include ".中国" (dot *zhongguo*).⁸²

Another widely-used technology concerning privacy issues in China is RFID, automatic-identification method via wireless, radio waves that relay and transmit data via responders or RFID tags.⁸³ China's computerized second-generation ID card, which

⁷⁷ Some of the studies include Jonathan Zittrain and Benjamin G. Edelman, "Internet Filtering in China," Harvard Public Law Research Paper No. 62, *IEEE Internet Computing* (March-April 2003): 70-78; Jed R. Crandall, Daniel Zinn, Michael Byrd, Earl Barr, and Rich East, "Concept Doppler: A Weather Tracker for Internet Censorship," paper presented at the 14th AMC Conference on Computer and Communications Security, October 29 – November 2, 2007; Richard Clayton; Steven J. Murdoch, and Robert N. M. Watson, "Cybersecurity Policy: Ignoring the Great Firewall of China," *I/S: A Journal of Law & Policy for the Information Society* (fall 2007); and Rebecca MacKinnon, "China's Internet: Let a Thousand Filters Bloom," *YaleGlobal Online*, June 28, 2005. Available at <http://yaleglobal.yale.edu/content/chinas-internet-let-thousand-filters-bloom>.

⁷⁸ For international, see, for example, Tim Wafa, "Global Internet Privacy Rights: A Pragmatic Approach," *Intellectual Property Law Bulletin* 13 (2009): 131-158. For regional see, for example, J. D. Tygar, "Technological Dimensions of Privacy in Asia," *Asia-Pacific Review* 10 (2003): 120- 145.

⁷⁹ Kong, op. cit.

⁸⁰ Cynthia Zhang and Matthew Murphy, The Protection of the right of Privacy on the Internet in China, *IBLS Internet Law— News Portal*, March 9, 2009. Available at http://www.ibls.com/internet_law_news_portal_view_prn.aspx?s=latestnews&id=2192

⁸¹ A CASS survey shows the variety of uses of China's Internet even in small cities. See The CASS Internet Report 2003, "Approaching the Internet in Small Chinese Cities," *Research Center for Social Development, Chinese Academy of Social Sciences* (October 2003). http://www.markle.org/downloadable_assets/chinainternet_casestudies.pdf.

⁸² "‘.中国’ to Be Global Top Level Domain Name," *People Daily Online*, November 4, 2009. Available at <http://english.people.com.cn/90001/90776/90881/6802916.html>

⁸³ Most of this section comes from my previous publication on China's ID card. The government approved in 2004. See "China's Second-generation National Identity Card: Merging Culture, Industry and Technology," in Colin Bennett and David Lyon, ed., *Playing the Identity Card: Surveillance, Security and, Identification in Global Perspective* (New York: Routledge, 2008).

employs the technology, is an update from the paper laminated-first generation identity card of 1985. Apart from its use by the government to facilitate population management, the card offers privacy risk for personal information. The technology is subject to data intrusion allowing unauthorized access to stored data on citizens. Another privacy risk is linked to data leaks of people's personal information. In commenting on a Chinese Academy of Social Sciences (CASS) survey of four major Chinese cities that revealed half of the 938 people polled had suffered from personal data abuse, Wang Xiaomei, the report's author, related use of ID cards and personal data violations.⁸⁴ People must present their cards for job applications, driving license application, entering a government facility, and going to casual outings such as a movie premier. Another shortcoming is the possibility of inaccurate information registered against someone via their card. False information risks damaging reputation and for the older generation can conjure memories of black or false materials in dossiers (*dangan*) during the Cultural Revolution,⁸⁵ which damaged reputations and caused people to experience humiliation or lose face (*minzi*).

On December 22, 2009, however, the National People's Congress, China's legislative body, passed the Tort Law⁸⁶ that considers privacy, data protection, and reputation with liability for damages from unauthorized leaks of personal information. Although it is not a personal data protection law and it does not specify the liability procedures, it is a culmination of several years of debate leading to more legislative outcomes on privacy. China anticipates the expansion of RFID and more wireless sensor technologies without laws to assuage the privacy issues.

⁸⁴ "Half of China Urbanites 'Victim to Personal Data Abuse,'" China Daily, March 4, 2009. Accessed on

⁸⁵ Hong Yung Lee, "The Politics of Cadre Rehabilitation since the Cultural Revolution," *Asian Survey* 18 (September 1978): 934-955.

⁸⁶ Tort Law of the People's Republic of China (中华人民共和国侵权责任法), Adopted at the 12th Session of the Standing Committee of the Eleventh National's People's Congress on December 26, 2009, promulgated and shall come into force on July 1, 2010. Decree of the President of the People's Republic of China (No. 21). December 26, 2009. http://www.npc.gov.cn/npc/xinwen/lfgz/zxfl/2009-12/26/content_1533267.htm

To be sure, China's expansion of wireless sensor technology will continue as is the case of developed and emerging countries. Developing countries are incorporating any aspects of these technologies they can afford. One recent development is the Digital-Out-Of-Home (DOOH) networks, which can interact with other systems such as RFID networks and social networks. The message and content boards, typically used for advertisement, can aggregate data unknowingly to individuals (citizens and foreign visitors) and store the collected data for later use. China's fast-growing market of DOOH is moving forward without privacy protections for the data stored for potential informational use.⁸⁷

Another wireless sensor technology development is the Internet of Things (IOT), which China's premier Wen Jiabao hailed in a speech last year. China's Ministry of Industry and Information Technology (MIIT) advances the priority of the IOT in China's development. An announcement from China's Chinese Academy of Sciences acknowledges the IOT as "a new engine for economic growth and opportunity to catch up with the developed countries."⁸⁸ One of the legal issues Rolf Weber and Romana Weber address in their book on IOT is the need for regulation to ensure user privacy.⁸⁹ The need to balance the concerns about privacy may weigh between security (as in body scans and RFID in the United States) and rights.

As China moves forward in developing various technology real-time locator system technologies such as RFID, Global Positioning System (GPS), and IOT, concerns for privacy protection, especially personal data protection, from users and for users will

⁸⁷ For privacy issues of DOOHs, see Pam Dixon, "The One-Way-Mirror Society: Privacy Implications of the New Digital Signage Networks," World Privacy Forum, January 27, 2010. Available at <http://www.worldprivacyforum.org/pdf/onewaymirrorsocietyfs.pdf>.

⁸⁸ CAS describes the IOT as "a number of technologies and research disciplines that enable the Internet to reach out into the real world of physical objects. Technologies like RFID, short-range wireless communications, real-time localization and sensor networks are now becoming increasingly common, bringing the Internet of Things to commercial use." See "China to Construct Internet of Things," *Chinese Academy of Science*, September 28, 2009. Available at http://english.cas.cn/Ne/CASE/200909/t20090928_44783.shtml.

⁸⁹ Rolf H. Weber and Romana Weber, *Internet of Things: Legal Perspectives* (New York: Springer, 2010).

increase. Debate about RFID for driver license, employee ID, employee monitoring in the United States, are emerging in all countries with and without a legal privacy framework. Privacy and security sections of advanced research conferences on these technology topics address privacy enhancing technologies (PETs) but lag in incorporation of regulatory frameworks for privacy for end users. The scholarly investigations will require international teams of multi-disciplinary researchers of information technology, wireless sensor technology, social sciences, law, and philosophy to anticipate the privacy risks and the users concerns in protecting their personal data.

Although the technologies may start out as nationally homegrown, they must fulfill international standards for commercial markets, thus raising similar issues of privacy protection in other countries of different political cultures. The issues, though addressed louder in some countries than others (and for different reasons) are beginning to echo from different political cultures and meet on a continuum coming from opposite end points.

If we simply view RFID, CCTV, and DOOH as surveillance tools in China, we miss the privacy protection issue. One is not exclusive of the other. We must remember the increasing use of surveillance technologies in democratic countries that debate privacy protection vs. civil liberties. As security threats increase, citizens in liberal democratic systems have called for increased surveillance against the threat of terrorism and crime. Are the threats that lead to relinquishing of some privacy protections of a country that is not acclimated to surveillance and data control (country A) and the move to heightened awareness of personal information leaks in a country acclimated to surveillance (country B) drawing closer on the continuum of personal data protection?

Factor Two: Consumer Information

As previously stated, China is experiencing personal data (*geren ziliao* 个人资料)⁹⁰ leaks of consumer information by banks, insurance companies, and real estate companies

⁹⁰ Some sources add “privacy” to the term as a cross reference 个人资料(私隐).

as the country seeks to build consumer trust in the modern banking and financial system and increase economic stability in the country. As noted earlier in the paper, privacy protection is crucial to enable support and legitimacy and to protect safety and stability in China. Trust is a key element. People must trust the infrastructure. Yang and Kluver maintain, “The necessity of trust presumes an infrastructure and context in which trust is warranted; that is, a reasonable expectation.”⁹¹

Findings of the 2003 Chinese Academy of Social Sciences’ study of Internet use in twelve Chinese cities indicate that among respondents, non-online users expressed more concern about the lack of personal data protection than online users.⁹² The increasing number of online users and more awareness about what happens to collected personal data, however, could yield a high number of users with privacy concerns today. One such issue is the networks built to aggregate data from diverse sources that could possibility affect people’s creditworthiness such as databanks that also control criminal records.⁹³ Another issue citizens have voiced is the posting of financial information online via the “personal credit rating system.”⁹⁴ This news display not only gives public exposure of one’s personal information but leaks secret information one would want to conceal from others. This type of public display has yielded complaints from citizens in counties in the U.S. that publish tax delinquencies in the local newspaper. Matched with other easily-obtainable personal data heightens a lack of privacy.

The Chinese government is adding regulation to alleviate personal information leaks or use of identifying personal information for profiling and discriminatory practices in credit lending. On October 12, 2009, the Legislative Affairs Office of the State Council issued

⁹¹ Yang and Kluver, p. 91.

⁹² They question asked about “invasion of privacy or exposure of credit card number.” See the CASS Internet Report 2003, “Surveying Internet Usage and Impact in Twelve Chinese Cities,” *Research Center for Social Development, Chinese Academy of Social Sciences* (October 2003), p. 45 and throughout.

http://www.markle.org/downloadable_assets/chinainternet_usage.pdf

⁹³ Beijing Municipal Government, Leading Bank to Build Individual Credit Records,” *People’s Daily Online*, December 10, 2007. Available at <http://english.people.com.cn/90001/90778/90857/90859/6317800.html>.

⁹⁴ “New Law Allows Public Posting of Citizens’ Credit Records,” *People’s Daily Online*, March 30, 2010. Available at <http://english.people.com.cn/90001/90776/90882/6934300.html>

a draft of the Regulations on the Administration of Credit Reporting restricting credit reporting agencies for collecting five kinds of personal information with two categories particularly covering personal information that if disclosed or abused could in a discriminatory manner or harm one's reputation. These two are: (1) nationality/ethnic identity,⁹⁵ family background, religious beliefs, and political affiliation and (2) bodily appearance, genetic data, fingerprints, blood type, and medical history.⁹⁶

China lacks an overarching personal data law, but the State Council's debate moves in the direction of protection of people's rights of personal information. The recently-passed Tort Law has already received charges of little recourse as it fails to clearly outline the stipulations and definitions. A shortcoming of the *ad hoc* laws is the difficulty in implementing these regulations, especially in local areas where resolution may depend on one's relations or connections (*guanxi*).

Factor Three: Cross-border Transactions

Personal data protection is also important for citizens and clients of countries engaged in cross-border electronic and outsourcing. Law firms representing clients with personal data revealed in China provide updates on Website to assure represented and potential clientele of privacy protections. Privacy protection of personal information holds for non-governmental and non-profit organizations, too, as they encourage and commit to cross-border transmission of personal data.⁹⁷ Increase in cloud computing crossing territorial boundaries in personal data heightens the concerns for all sectors.

⁹⁵ China has more than 55 ethnic groups.

⁹⁶ See Legislative Affairs Office of the State Council, "Regulations on the Administration of Credit Reporting (Draft for Comments)," October 12, 2009.

(国务院法制办对征信管理条例向社会征求意见) Available at http://www.gov.cn/jrzq/2009-10/12/content_1437069.htm.

⁹⁷ "Obtaining and Transmitting Personal Data as a Means of Protection and of Preventing Disappearance," *International Review of the Red Cross*, Originally December 31, 1986. Available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JMDG>. Also, non-profit cross-national interactions are affected such as in the donations to support relief efforts of international disasters such as the 2010 earthquakes in Haiti, Chile, and China.

China has worked with the European Union in efforts to address the data protection issues in cross-border transactions for national law⁹⁸ and participated in rounds of subcommittee meetings on the APEC Privacy Framework, which was adopted in 2004 and finalized in 2005. Yet, a legal framework for privacy protection does not exist. Although APEC was considered a likely venue for such a framework, the nature of the organization, with its lack of a binding treaty for member economies, does not bode well for a regulatory framework. Then President Clinton's reference to the "C" in APEC (the Asian Pacific Economic Cooperation) as "Community" generated reaction from members' leaders about the close-knit ties of a community, which they reiterated APEC did not reflect.

Numerous scholars still question the role of APEC as an effective privacy framework. Graham Greenleaf doubted the prospect at the outset⁹⁹ and reviewed the APEC Privacy Framework lacking in meeting the regulations of the OECD Guidelines and the EU Directive and not likely to with its weak Privacy Principles and the void in meaningful enforcement requirements.¹⁰⁰ Although the APEC Privacy Framework falls short of the EU Directive, Gabriela Kennedy et al maintain it offers a "minimalist approach to data protection compliance that falls short of what would be considered to be an 'adequate level of protection' under the EU Directive."¹⁰¹ Qi Tong reiterates the initial model of APEC as a voluntary regional economic grouping consisting of different cultures, laws, and political systems.¹⁰²

⁹⁸ "Workshop on 'Data Protection Issue Identification'," *EU-China Information Society Project*, April 2007. Available at <http://www.eu-china-infso.org/Regulation/regulation090800@2007-04-20.html>

⁹⁹ Graham Greenleaf, "The APEC Privacy Initiative: 'OCED Lite' for the Asia-Pacific?" *Privacy Laws & Business* 71 (January/February 2004): 16-18.

¹⁰⁰ Graham Greenleaf, "Five Years of the APEC Privacy Framework: Failure or Promise," *Computer Law & Security Report* 25 (2009): 28-43.

¹⁰¹ Gabriela Kennedy, Sarah Doyle, Brenda Liu and Contributors, "Data Protection in the Asia-Pacific region," *Computer Law & Security Review* 25 (2009): 59-68.

¹⁰² Tong Qi, "Research on Regional Cooperation Mechanism of Competition Policies," *Frontiers of Law in China* 4 (2009): 82 – 101, trans. *Wuda Guojifa Pinglun (International Law Review of Wuhan University)* 6 (2007): 278-311.

Whether two-level personal data protection evolves remains to be seen. A multi-level approach, however, has occurred with subnational levels in China, i.e. provinces, establishing their own personal data protection laws to facilitate cross-border trade.

Factor Four: Multinational and Regional Organizations in a Soft Power Era

Rather than focus on China's willingness to support an international or regional privacy framework for cross-border transactions, another approach is to examine China's emergence as a soft power in the region and world and the responsibilities that leadership entails. Soft power, as opposed to hard power, emphasizes the country's participation in multilateralism. And for China, it has also meant proliferation of China's culture and language internationally through Confucius Institutes.¹⁰³

China has sought a policy of peaceful development and harmonious society in its international relations and its outreach to improve neighborly relations with the members of the Association of Southeast Asian Nations (ASEAN), which has a certain amount of overlapping membership with APEC. Beyond the regional neighborhood, China has strengthened relations with Latin American countries, sought strong ties with South Africa, solidified its participation with ASEAN as a member of the ASEAN PT (ASEAN Plus Three—China was formerly an ASEAN dialogue partner), and joined its recent multilateral arrangement of BRIC (Brazil, Russia, India, and China). The leadership role and the developments of related countries may offer China a reminder of the direction of privacy protection data framework that some of these countries are advancing.

ASEAN is establishing a privacy framework, and Russia, Malaysia, Thailand, and Taiwan (as APEC economies) have either passed or are in the final throes of debate of personal data laws.¹⁰⁴ APEC provides updates on member economies' actions on personal data protection laws. Surely China will not remain alone when other members

¹⁰³ Joshua Kurlantzick, *Charm Offensive: How China's Soft Power is transforming the World*, (New Haven, CT: Yale University Press, 2007). Kurlantzick's description, I admit, varies from Joseph Nye's, but the focus on multilateralism holds for both authors' approaches to soft power.

¹⁰⁴ Malaysia data privacy law debate began almost a decade ago.

update their laws. To be sure, these privacy data laws or debate of Russia, Malaysia, Thailand, and Taiwan are not without gaps in meeting the OCED Guidelines and EU Directive, but China's leadership among this neighborly company could be a persuasive factor in legal changes.

Factor Five: Leadership Generations

Another influential factor to consider in China's development of personal data protection is the changing profile of generational leaders in China, with more leaders from the fields of the "soft sciences" of history, economics, management, business, along with journalism and law—a difference in educational background from the revolutionary leaders and engineers of previous leadership generation.¹⁰⁵ Could the educational training and experiences of the forthcoming leaders—the fifth generation—that rose to the Politburo in 2007 and will be at the forefront of leadership with the transition in 2012 offer a different perspective on privacy protections? How appropriate is Bunce's¹⁰⁶ theory of new leaders making a difference in public policy? Will the policies include a privacy data framework? Could an increased leadership trained in law and the social sciences facilitate the legal transformation China is experiencing, lend credibility to the burgeoning professional lawyers, and resolve the dominant hold of the Chinese Communist Party on all sectors of society? With the numerous changes, the direction of the outcome may be too early to speculate,¹⁰⁷ but are crucial factors for policymakers to consider.

The sixth generation—even more than the fifth—offers different characteristics from the previous leadership generations. For the most part, this group of forthcoming leaders has provincial-level leadership experience, did not experience the Cultural Revolution (as did

¹⁰⁵One school of thought in China politics examines the top-level leaders as members of generations: first, second, third, fourth, fifth, and sixth. A revised version of the paper will present a typology of all privacy-related laws, emphasizing personal data laws according to generation.

¹⁰⁶ Valerie Bunce, op.cit.

¹⁰⁷ See the theses of scholars from the disciplines of law, political science, and history in Neil J. Diamant, Stanley B. Lubman, and Kevin O'Brien, *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford: Stanford University Press, 2005).

the fifth generation that received the label of the “lost generation”),¹⁰⁸ has a strong sense of national pride of China’s technology advancements, and want to see a stable trajectory of growth and development. This leadership generation’s local-level experience as provincial leaders may help in meeting the challenges of discrepancies of implementation of laws at the local level and the autonomy of local levels against the central level.

Apart from the generation of leadership, we must consider the influence of the future generation of China’s citizens. The single-child generation (born in 1979 and after) has begun to reach adulthood with the “4-2-1” responsibility minus the extended families. Unlike ever before in China, one child is responsible for two parents and four grandparents. Studies are researching the expectations of China’s generation of single children.¹⁰⁹ Some scholars are speculating that privacy, although of the spatial realm, may be desired by a generation used to more space. Also, acclimation to the Internet and the emerging technologies may yield more desire for information privacy.

Let us recall Lü’s reference to the relation between the economy and stability. Maintaining a stronghold in the global economy involves participation in it. Participation increasingly will require a legal privacy framework. However, before we decide that China’s desire to change will challenge its political culture, we must consider the country is experiencing a transitioning culture with a different leadership generation, a different generation of citizens, *and* witnessing the changes in the privacy legal framework on the horizon in other countries. These two types of countries may meet on a continuum of convergence in privacy issues. Policymakers must clearly identify and consider the factors that create a personal data protection framework, which addresses the rights and liberties of citizens based on the type of political system and culture.

¹⁰⁸ The term refers to those students that lost out on educational opportunities during China’s tumultuous years of the Cultural Revolution.

¹⁰⁹ See, for example, Vanessa L. Fong, *Only Hope: Coming of Age under China’s One-child Policy* (Stanford: Stanford University Press, 2004); and Theresa Hesketh and Zhu Wei Xing, “The effect of China’s One-Child Family Policy after 25 Years,” *The New England Journal of Medicine* 353 (September 2005).