Chapter 11
Privacy: A Genealogy in the East and the West

Chih-hsing Ho

Abstract Although a general term used frequently in ordinary language, as well as legal and philosophical discourses, privacy remains an elusive notion. In modern legal discussions, it has been argued that privacy is an integral part of intimacy and autonomy, and goes to the essence of individual dignity, and thus ought to be protected through the creation of a sphere free from outside interference. This normative account of privacy, as Warren and Brandeis proposed in the late nineteenth century, provides moral grounds for the later development of privacy protection in American law. Such recognition of the private sphere, based on the public and private distinction, can be traced up to Aristotle’s distinction between the polis and oikos, which refers to a private domain consisting of the family household that can be thought separate from public interference. However, the question arises: is there an equivalent notion of privacy in the very different context of Chinese culture, and if so, to what extent is it valued and preserved? This chapter discusses the notion of privacy by digging into its rich genealogical origins in ancient Chinese and Western thoughts. This approach is intended to offer a comparative perspective for the analysis and re-examination of notions of privacy, and to further explore the consequential implications of the public/private binary in the later legal developments when privacy came gradually to be recognised not only as a value to be respected, but in modern legal discourses as a right to be protected.

Keywords Privacy • Gong and si • Public/private dichotomy • Right to privacy • Genealogy • East and West

11.1 Introduction

This chapter aims to contribute comparative and historical dimensions to further enrich analyses of notions of privacy in the East and the West. Using a comparative perspective in legal research is not alien to most legal scholars nowadays. However,
this comparative approach has gradually been developed into a research method limited to the analysis of sources of law rather than pay broader attention to the significance of the temporal and spatial factors that construct the legal culture of a society and/or legal consciousness within. In some disciplines in the humanities and social sciences, a comparative approach frequently implies adopting a holistic view that tries to distinguish speciality from universality. Anthropology, especially British social anthropology, for example, has been viewed as a comparative science in the sense that comparison has naturally become an anthropological tool when anthropologists enter the fields and then experience cultural heterogeneity, reflexively speaking.¹

As Lawrence Rosen argues in his book *Law as Culture*, law is integral to culture and is actually a part of a culture’s way of expressing its rationality and sense of the order of things.² This holistic view is essential to understanding the complexity of law. So the focal point here is no longer what the law or a particular notion is (or ought to be). Rather, it is one step further along the road by asking a question to understand how the notion has evolved and under what conditions it came to appear as it now does. Such an effort in contextualisation is enormously crucial in comparative studies. On the one hand, it provides a broader context upon which a dynamic and heavily conceptually laden notion – privacy – can be delineated in a more comprehensive way. On the other hand, it also preserves a space in order to understand speciality within a particular socio-political setting and the reasons why that speciality can be distinguished from universality.

Although a general term used frequently in ordinary language, as well as legal and philosophical discourses, privacy remains an elusive notion. This chapter discusses the notion of privacy by digging into its rich genealogical origins in ancient Chinese and Western thought. This is intended to offer a comparative perspective for the analysis and re-examination of notions of privacy, and to further explore the consequential implications of the public/private binary in the later legal developments when privacy came gradually to be recognised not only as a value to be respected, but in modern legal discourses as a right to be protected.

11.2 Privacy in the East

11.2.1 The Personal, the Intimate and the Clan

It has never been easy to study the genealogy of privacy in the Chinese context. The main difficulty lies in the complexity contained within the notion of “privacy”. For any serious discussion about this dynamic terminology, one has to first make a deliberative choice with regard to what is to be discussed among a wider range of

¹Stocking (1995).
variation: is this the content, value, awareness or function of privacy that we wish to scrutinise? Such distinctions are essential as privacy is multifaceted, and one’s view depends very much on one’s perspective. Another challenge lies in the language itself. Could we find an equivalent term for privacy in the Chinese language? If not, what kind of Chinese term can be adopted in parallel with English usage of privacy?

Questioning whether a comparative analysis of Eastern and Western notions of privacy is feasible, it is not always easy to delineate how one might attempt a delicate and multilayer inquiry of this multifaceted, dynamic notion. Such discussions frequently lead to more straightforward responses about privacy awareness or the “sense of privacy” of a particular society at a particular time. But this simply demonstrates that reaching a comprehensive definition of privacy has always been challenging. We could perhaps analyse a way of understanding of this commonly used term by looking at texts and conduct that may have reflected a shared perspective and way of thinking about privacy among a group of people. However, it is also important to acknowledge that even within a society and culture, there is a great diversity of beliefs and opinions on how privacy ought to function and be valued and what precisely this dynamic term refers to in the complexity of real life.

There is no uniform translation of privacy in the contemporary Chinese-speaking world. In Taiwan and mainland China, for example, privacy is translated as “yin si” (隱私), while in Hong Kong the order is reversed: “si yin” (私隱). The characters yin and si constitute a compound word for privacy in Chinese, but each character has its own independent meaning. Si is often described as the paired opposite of gong (public) in Er Ya (爾雅), the oldest known Chinese encyclopaedia, which dates back to the third century BC. Distinct from public sphere or public service, si may refer to private interests or even selfishness depending on its context. Like privacy in English usage, there are also a range of words related to si with similar but not identical meanings. For example, in discussions about physical spaces, si is close to the concept of inner (內), while if the focus is some aspect of one’s mental or emotional life, it is closer to another term, intimacy (親密). Sometimes, si can also be used to refer to things personal or individual (個人) or even secret (秘密) in Chinese. Another related word, yin, is also rich in meaning, though compared to si, it is more concerned with the sense of concealment, hiding or anonymity.

It has been noted that many discussions about privacy in premodern China focus more on the functions and values of the concept than its contents. This observation is supported by evidence drawn from Chinese literature (poems, fictional works and autobiographies) in which private life is occasionally described, if not ironically, as a joyful retreat from one’s public role and duty. The majority of texts from the Han dynasty onwards are influenced heavily by Confucian thought emphasising one’s responsibilities in the public sphere. So retirement or exclusion from public office in Imperial China provided an alternative scenario for scholars to contemplate the

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4 Id. at p. 20.
5 Id.
values of private life. Several renowned scholars and poets have demonstrated this subtle switch from a focus on public (political) life to the contentment to be found in private retreat. For example, during the Tang dynasty, Li Bai (李白)’s poetry reflected such wisdom drawn from Taoism with an easy playfulness. Although twice unwillingly sent into political exile, the poet’s works praise the magnificence of nature and the depths of solitude, both of which give expression to very personal freedoms that usually fall outside of the public sphere in Chinese thought.

In addition to literary texts, inscriptions on bronze ritual vessels provide additional rich resources for the study of private life in ancient China. In Maria Khayutina’s work, she uses inscriptions on ritual bronze vessels and bells as a prism to reveal traces of privacy representations and ethical values in the Western Zhou period (1046–771 BC). She argues that as only members of a clan were allowed to communicate with the ancestors, the unit of privacy in Western Zhou could be as large as the clan, which was organised on the basis of kinship. In addition, as the bronzes were viewed as sacred materials to serve as mediators in sacred and cosmological communications, access to the bronzes was limited only to members of the clan or clan associates by invitation. For Khayutina, this large private sphere consisted of a sense of communal life based on blood relations: families or households. The ancestral line is intimate as it is the basis for the pedigree of nobility. Inscription here, as anthropologist Stephan Feuchtwang argues, turns to be ingredients in the performance of “an exclusive ritual possession”. Nevertheless, with the private clan unit, many aspects of communal life, including exclusive ritual practices, existed for the purpose of performing public services. It demonstrates that in ancient China, the unit of privacy could be much larger than the household or family. However, such delineation is unavoidably mingled with the public realm when the functions and values of privacy were taken into consideration in the interpretation.

11.2.2 “Gong” and “Si”

In early Chinese thought, the terms gong (公) and si (私) were paired as polarised notions in various contexts. That said, there is no consensus as to when the polarisation of these two terms first emerged. Some scholars argued that Han Feizi (韓非子) (third century BC) was among the earlier scholars who pointed out that the terms gong and si are mutually contradictory. Similar statements can also be found in the third century BC Er Ya (爾雅), in which gong is simply defined as not si. In addition, in Shuowen (説文), a second century BC Chinese etymological dictionary used to explain graphs and analyse the structure of characters for their underlying

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7 Id. at pp. 84, 91.
8 Id.
10 The original words: “公私之相背”; see Goldin (2005), pp. 58–65.
rationale, *si* was linked etymologically with *gong*, suggesting a semantic connection between the terms.\(^ {11}\) However, other sinologists argue that although the appearance of *gong* is not uncommon in bronze inscriptions and pre-Warring States texts, it did not necessarily appear in conjunction with *si* during that time.\(^ {12}\) Erica Brindley has found evidence from the texts and materials of the early Warring States, like *Zuo Zhuan* (左傳) and the *Analects of Confucius* (論語) as well as some oracle inscriptions, to support her argument regarding the non-polarised usage of the terms *gong* and *si*.\(^ {13}\) She found that *gong*, even though used frequently in the texts, denoted the ministers, namely, the prestigious positions, like *san gong* (三公) in the Zhou dynasty. In this context, it was not necessarily used in conjunction with the term *si*.\(^ {14}\)

By the same token, *si* has a number of rich meanings not necessarily associated with *gong*. In the *Analects*, for example, *si* can refer to one’s self. A well-known phrase such as *xing qi si* (省其私) suggests that the meaning of *si* implies human subjectivity or personal conduct and behaviour. Here, *si* is not necessarily associated with any negative connotations regarding self-interest but has its own individual denotation. However, in the later period of the Warring States period, more and more texts employed *gong* and *si* as dichotomous notions. So polarised, *gong* and *si* were frequently imbued with moral connotations, with *gong* usually associated with positive moral notions concerned with impartiality, fairness, objectivity or the universal way, which emperors were deemed to represent.\(^ {15}\)

The emergent polarisation of *gong* and *si* resulted in these two terms being frequently embedded not only in moral discourses but also political. When Yang Zhu (楊朱)’s philosophy restrains him from sacrificing his trivial interest (a hair) to benefit the public good, this attitude was criticised by Mencius (孟子) as egotistical, though Yang Zhu emphasises the recognition of self-preservation, as the world would not benefit from mere self-impairment. *Si*, in this dichotomous context, cannot be deemed to refer to only the private sphere without moral implications. It is this privileging of individual desire, as opposed to altruism, that was condemned by Chinese moralists. This moral discourse was later enlarged by Chinese scholars to provide criteria against which incapable rulers were disqualified from kingship of the sage-kings. During the Ming dynasty, Huang Zongxi (黃宗羲)’s renowned *Mingyi Daifang Lu* (明夷待訪錄) expressed concern that the empire had been viewed as the private property of the emperor rather than the common property of the people or commonwealth as a whole.\(^ {16}\) Huang promoted the idea that a sage-king ought to seek benefit not for private interest, but for the benefit of all under heaven.\(^ {17}\)

\(^ {11}\) Xu (2005).
\(^ {12}\) Brindley (2013), pp. 6, 7.
\(^ {13}\) Id.
\(^ {14}\) Id. at p. 7.
\(^ {15}\) Id. at pp. 7, 8.
\(^ {16}\) Huang (2001).
\(^ {17}\) Zarrow (2002), p. 133.
In the late Qing, *gong* and *si* were contrasted directly again in political discourses. Influenced by the Western liberal political thought, Liang Qichao (梁啟超) further echoed Huang Zongxi’s perspective, associating Western parliamentary systems with *gong* and condemning Chinese autocracy, the transmission of the throne based on blood relationship, as *si*. Furthermore, according to Liang, the individual’s rights to autonomy and benefit were also associated with *gong*, so monopolistic and autocratic practices and rights, like monarchy, were viewed as *si* (selfishness). He praised democracy as *gong* and an expression of public mindedness, holding it up as the ultimate standard of governance. In order to reach this public-mindedness standard, Liang advocated the notion of citizenship and encouraged people to cultivate themselves in order to be responsible and assertive citizens capable of contributing to the Chinese nation. Emphasising that the group’s morality, *gong de* (civic virtue), is a collective representation of *si de* (personal virtue), Liang argues that *gong* and *si* in this dynamic context need not necessarily stand in sharp contrast, but can be deemed towards inclusive notions.

### 11.3 Privacy in the West

#### 11.3.1 The Distinction Between Public and Private

The line between what is “public” and “private” has been a contentious point in Western thought since classical antiquity. This grand dichotomy is reflective of the diversity and the complexity of the public/private distinction. In social and political debates, and moral and jurisprudential practices, the distinction itself provides a rich context for one to analyse and trace the sociohistorical roots of this complexity. Indeed, the drawing of what is judged an appropriate line between the public and private, and how this line shifts in order to satisfy societal change, reveals the fluidity of the notion of privacy. As a result, it would be easier for us to observe this dynamic nature when the analysis of the public/private distinction is conducted from a historical and longitudinal perspective.

In classical antiquity, the word “public” is reflected in the following two models: the “republic” (*res publica*, meaning public thing) of the Roman Republic from which the notion of citizenship is derived and in the public power of sovereign rules. Though both of these models constitute a notion of the public, their contents and discourses are distinct. Within the republic, the realm refers to a terrain permitting public action and deliberation. In Hannah Arendt’s words, this public realm is...
in fact a public space that enables one to be heard, be seen and then excel by her or his act and speech and engagement in the politics.\textsuperscript{23} In this sense, the true meaning of citizenship lies in the entitlements of participation in a community, so the value of being a citizen is also recognised in collective self-determination. Ideally, in such a public realm, there is no domination nor subservience in the processes of decision-making as all citizens are coequal with one another in the public sphere. They seek, through speech and action, to reach consensus. However, this species of equality is dissolved in the private realm of the household, in which hierarchical status relations – husband and wife, master and slave – constitute the basic structures of the sphere. This public/private dichotomy influences the basic framework of liberal social theories in the West that emphasise republican virtue in the practice of citizenship.

In contrast to the republic, which focuses on active political engagement by the citizenry, the sovereignty derived from the Roman Empire is representative of another type of public realm that governs society via a centralised and unified apparatus and the administration laws. This conception of the public realm focuses on the rule of the sovereign. In this context, the sovereign, as later developed in Thomas Hobbes’ \textit{Leviathan}, refers to a coercive agency ruling over the society.\textsuperscript{24} In this sense, the public/private distinction turns on a differentiation between the state and non-state.\textsuperscript{25} The so-called non-state or nongovernmental sector, in modern rational choice discourses, is conceived in terms of the theories of the market, though in early times, the market is actually not autonomous but embedded in the society with its original meaning referring to a location of the exchange of goods.\textsuperscript{26} In this model of public realm, the public is very different from what have been discussed by Arendt or Habermas.\textsuperscript{27} Compared to citizens’ engagement in the public sphere, individuals here are mainly subject to the rulings of the sovereign by willingly consenting to form a social contract with \textit{Leviathan} as a means of coping with their nature of self-interests. The public realm refers to such a representative political power. So, rather than actively engaging to create a public life based around citizenship, the notion of the public in this context refers to a technocrat structure in which individuals’ interests are submitted to a higher sovereign through the administration of the law.

Along with the later development of the history, the public/private dichotomy in the modern era becomes much more diversified. The public realm cannot be simply reduced to the state or collective decision-making as praised and practised in the Roman Republic. Rather, the gradual emergence of the private realm reflects the intense privatisation of the family and intimate relations. Public life in this transformation accompanies other functions – it is not political, but sociable.\textsuperscript{28} Here, the

\begin{thebibliography}{99}
\bibitem{Arendt} Arendt (1958).
\bibitem{Hobbes} Hobbes (1651).
\bibitem{Id.} Id.
\bibitem{Polanyi} Polanyi (1944).
\bibitem{Habermas} Habermas (1991).
\bibitem{Weintraub} Weintraub (1997), p. 18.
\end{thebibliography}
public realm provides alternative meaningful roles to bind individuals together and from this emerges a sense of community with trust and security. In traditional discourses, the emotive aspects of society would naturally fall outside of the public realm. On the other hand, this perspective on sociability in the public sphere may not operate effectively without dealing with the political. On the physical level, for example, this public space of sociability would not be possible without agreeable spatial and social arrangements, though these may not necessarily be relied upon as a mechanism promoting virtuous collective decision-making. In fact, it is the heterogeneous coexistence of individuals, rather than conscious collective action, which enriches this different model of public space, unlike the civic model which posits a self-governing polis in which citizens act together to take collective action and assure their common benefit.

Although there are several different models accounting for the public/private dichotomy, the two models discussed above seem to share one similarity. That is a focus on defining the notion of the public while consciously or unconsciously leaving aside the private as a residual category. This attitude has been criticised by proponents of another influential perspective in the interpretation of the public/private dichotomy – feminism. In feminist theory and anthropology, the private sphere, which is usually conceived of as the domestic or family sphere, is the central point in conceptual discourses. It is further argued that the public/private dichotomy itself is deeply gendered, and under this distinction, the domestic sphere has been treated as trial. Similarly, men and women are assigned to different spheres of this dichotomy based on their biological and natural characteristics, and thus women are perceived in a position of inferiority. In both jurisprudence and practice, one recognised hazard of this dichotomy is the violence inherent in this structure which shields the abuse of women from public scrutiny and proper legal address.29

For some feminists, accepting this public/private dichotomy actually reinforces the ideologies behind male domination rather than reflecting and criticising such structural violence.30 Again, looking back to classical antiquity, for Aristotle, the distinction between public and private is that between the political community and the household (the oikos).31 While the public realm is seen as a terrain for the practice of citizenship, the household is viewed as a realm of natural inequality in which women, like slaves and children, are excluded from the status of citizens and so belong exclusively to the private sphere. As a result, what concerns most feminist studies scholars is no longer how to properly distinguish between what is public and private and what public is defined. Rather, they are concerned with avoiding a hidden structure in political institutions and societies that may reproduce female subordination under this public/private dichotomy.

The binary opposition of public and private has never been consistent. Based on different discourses and historical contexts, what falls into one category from a perspective may later shift into another category with no more than a change of

30 Id.
31 Aristotle (1999).
context or analysis. The ancient Greek word *oikos*, for example, constitutes several related but different notions: the family, the household and everyday living activities in the house, as Aristotle describes in his *Politics*. In this context, the *oikos* encompasses not only family life but also economic life, for as in ancient Greece, the *oikos* can also function as a basic agricultural unit of an ancient economy. At the same time, the household is the main institution within which production and distribution both occur. However, for Marxist feminists, a market economy is viewed as a public realm distinct from the family, which constitutes the essence of the private sphere. These different interpretations of a market economy demonstrate that the line drawn between public and private also needs to be contextualised. The character of public could be ambiguous in different political and historical discourses, so what constitutes private or privacy can also be equivocal depending on the differing contexts in which the idea is discussed and constructed.

### 11.3.2 The Right to Privacy

Even though there has been much discussion through the years about the distinction between the public and private in Western social and political thought, the right to privacy did not receive legal recognition until late. Within the common law tradition, an individual is deemed to be entitled to full protection of person and property. Nevertheless, the nature and extent of such protection rested only on the tangible and physical interference with one’s life and property. The legal recognition of the enjoyment of life in one’s spiritual level, including the protection of feelings, emotions and the peace of mind, came along with later social developments. In Samuel Warren and Louis Brandeis’s monumental article published by the Harvard Law Review in 1890, the right to privacy was proposed as essential to the right to enjoy life. They adopt Judge Cooley’s notion of “the right to be let alone” to illustrate the necessity of granting an individual such a right to retreat from the public to develop her or his own personhood through sincerity.

Warren and Brandeis made a distinction between the material and spiritual categories upon which compensation can be granted. The right to be let alone is distinctive in the sense that it recognises a remedy for mental suffering which does not necessarily result from a malicious intention. Nor does it focus on the injury done to the reputation of an individual that harms her or his external relations to the community. It is a distinctive ground upon which a remedy can be sought from private individuals for protection against the growing abuses of the press that caused unjustifiable infliction of mental distress during that time. This aspect of “the right to be let alone” encourages us to further inquire into the nature and value of this emerging right. The same question haunted the many great legal scholars in the late nine-

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32 *Id.*
33 *Id.*
34 Warren and Brandeis (1890).
teenth century. When new technologies, like an inexpensive portable camera, were invented and made easily accessible to the general population, the limits of publicity one expected to retain power to fix met new challenges too. The core value of protecting one’s right to be let alone turned out to lie in the recognition of one’s willingness and power to decide the extent and character of one’s engagement with the outside world.

The above distinction did not make privacy a less complicated notion. Warren and Brandeis’s noted article did not receive much attention at that time, only later gaining influence in legal circles. Nor did it have an immediate effect upon law. In the case of Roberson v. Rochester Folding Box Co. in 1902, the court refused to recognise the right to privacy as an existent legal ground for remedy when the defendant’s company used the plaintiff’s photo in its advertisement without her consent. In a tight vote, the court cited the lack of precedent and stated that its rejection was based not only on the purely mental character of the injury but also on fear of imposing an undue restriction upon the freedom of the press. This decision again speaks to the difficulty of drawing a proper line between public and private. It was not until 1905, about three years later, that the Supreme Court of Georgia took a step towards accepting Warren and Brandeis’s views on the right to privacy in the case of Pavesich v. New England Life Insurance Co.

Though the case of Pavesich then became the leading case, for almost 30 years, the courts in the United States were still not consistent in their rulings with regard to the recognition of the right to privacy by choosing to follow the Pavesich or Roberson case. The issue took a circuitous route through the courts before the right to privacy was recognised in the United States. However, many jurisdictions in the early twentieth century still gave little consideration to what this right would consist of or to what kinds of conduct this right would protect. Contemporary legal understanding only coalesced seven decades after publication of Warren and Brandeis’s article when William Prosser wrote another famous work on privacy, in which he identified four types of torts deriving from the invasion of the right to privacy: intrusion of solitude, public disclosure of private facts, false light and appropriation.

The first type of tort – intrusion – protects one’s interest in being let along, that is, in solitude and seclusion. It occurs when a person’s private property or private affairs are invaded but carries well beyond physical intrusions into someone’s physical private space. For example, private conversions secretly recorded without proper disclosure and consent fall well within the bounds of this type of intrusion. The

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35 In this case, the plaintiff was a young lady and the defendant; the flour company made use of her picture in advertisement of the flour without her consent. As the court rejected to recognise the existence of right to privacy, the plaintiff was not entitled to any protection against such conduct.

36 The facts in the Pavesich v. New England Life Insurance Co. are pretty much the same as the case of Roberson. In this case, the defendant was an insurance company, and it made use of plaintiff’s name and picture in its advertisement without the plaintiff’s consent.

37 Prosser (1960).

38 Id.
second branch of Prosser torts – public disclosure of private facts – was the type of invasion of privacy with which Warren and Brandeis were mainly concerned. The interests protected in this category concerned reputation, and the arguments were conducted against the background of the legitimate interests of the press in publishing. Moreover, this form of tort requires that what is disclosed to the public be private facts. However, in practice, interpretation of what constitutes “private facts” had never been easy for the courts. Apparently, the term had usually been deemed to be the facts not to be left to the public eyes.\footnote{Milton (1996).} As a result, when one makes her or his private information or appearance public, the right to privacy is somewhat compromised and the protections one may expect cease to extend as far as previously. This would inevitably lead to challenges regarding how to delineate the proper scope of privacy protections.

The third branch of tort – false light – occurs when publicity places someone in a false light in the public eye. A common example of this invasion of privacy is the use of the plaintiff’s photo or testimony, which falsely attributes to the plaintiff opinions to associate the plaintiff with an action with which no reasonable connection exists.\footnote{Zimmerman (1989).} Even though this type of tort constitutes many elements that would overlap with defamation, it provides broader scope for the protection of privacy as it goes beyond the law on defamation for malicious intent, which needs not necessarily exist in the constitution of the false light publicity.

The last branch of tort – appropriation – refers to the appropriation of the plaintiff’s name, image or other likeness for the defendant’s advantage without the plaintiff’s knowledge or approval. The advantage involved here is not limited to pecuniary loss, and one’s name which is viewed as a symbol of her or his identity must be appropriated, namely, that the name needs to be accompanied by false statements about the plaintiff or to make her or him be placed in a false light.\footnote{Id.} In addition, even though the publicity is usually involved, it is not necessarily a constituent element of this branch of privacy invasion.

## 11.4 Concluding Remarks: A Comparative Perspective

Culture, for the pioneering anthropologist Edward Burnett Tylor, is a complex holistic system which includes the full range of learned human behavioural patterns such as knowledge, belief, law, custom and any other capabilities that individuals acquire as a member of society.\footnote{Tylor (1871).} One can therefore recognise what a culture of a particular region is by examining the ideas, beliefs and behaviours that a social group shares. By the same token, this chapter tried to investigate ways of understanding the notion of privacy by looking at texts and conduct that may have reflected a shared perspec-

\footnotesize{\textsuperscript{39}Milton (1996). \textsuperscript{40}Zimmerman (1989). \textsuperscript{41}Id. \textsuperscript{42}Tylor (1871).}
tive of this commonly used term. Moreover, it tried to demonstrate that even within a society and culture, there remains a great diversity of beliefs on what the functions and values of privacy are. Interestingly, a certain degree of culture universal seems to show that privacy in either culture is a potentially more flexible and negotiable realm than a static conception. The means by which a proper line is drawn between public and private reveals that the public/private dichotomy is not unchangeable and straightforward. Rather, it is akin to a dynamic trajectory reflecting the socio-political situation at particular temporal and spatial localities.

A binary opposition of public and private has never been consistent in both Eastern and Western contexts. Based on different historical settings, what falls into one category from a certain perspective may later shift into another realm when the discourse and standpoint of analysis change. This chapter analysed this complexity through a comparative study of the public/private dichotomy. It re-examined the notion of privacy and further explored the consequential implications of the public/private binary when privacy was later embedded in legal discourses. Although in practice, reaching a satisfying conception of privacy remains a challenge for legal theorists and jurists, digging into the historical roots of this rich notion is evocative as it produces a holistic comparative perspective in which notions of privacy can be re-embedded into their own temporal and spatial specialities.

References

Brindley E (2013) The polarization of the concepts Si (private interest) and Gong (public interest) in early Chinese thought. Asia Major 26(2):1–31
Hobbes T (1651) Leviathan
Polanyi K (1944) The great transformation. Beacon, Boston
Tylor EB (1871) Primitive culture: researches into the development of mythology, philosophy, religion, art, and custom. John Murray Ltd., London