THE SELF AS INFORMATION:
*THE GLOBAL LIMITATIONS OF THE RIGHT TO PRIVACY**

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> *And law is that which holds our reality apart from our visions and rescues us from the eschatology that is the collision in this material social world of the constructions of our minds.*
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> *--Robert Cover*[1]

INTRODUCTION

The universe is a matter of information. Reality, after all, can only begin with the moment of perception. There is a grain of truth in Berkeley's statement that "to be is to be perceived."[2] Observation is not merely a passive reception of information but is constitutive of reality. This paper will argue that the legal notion of the right to privacy and the possible limitations thereof are fundamentally informational issues. The right to privacy is inextricably intertwined with the idea of the self which, in itself, is also a matter of information. This will be seen in the context of the continuing phenomenon of globalization.

I. THE BUILDING BLOCKS OF REALITY

A thing can only be a *thing* when there is an observer. We can of course surmise that things external to us may exist in our absence. They are, after all, apart from us. But this does not assure us that the things unobserved and the things we observe are the same. In fact, they are different. The colors of the light spectrum, for instance, are particular to the human eye. Cats and dogs do not see a rainbow the way that we do. The classical conception of the human mind as a mere passive receptor of sense

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[1] Robert Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 10 (1983).

[2] *"Esse est percipi."* Cf. J. P. SARTRE, BEING AND NOTHINGNESS, 9-24 (Barnes ed. 1956).

data has long been debunked. Indeed we have evolved to have preexisting physical and mental conditions[3] of knowing. The act of observation *per se* significantly constructs reality for us. What we observe—the unitive phenomena of various stimuli—is information. Indubitably, matter[4] and information are inseparable.

The heart of quantum mechanics is the Uncertainty Principle formulated by Werner Heisenberg. At the level of subatomic particles, this principle powerfully illustrates how reality *becomes* through the act of observation. The more accurately we try to measure the position of a particle, the less accurately we can determine where it is going. This becomes even more evident the smaller the particle is. Observation requires light and light contains energy. In order to measure something with greater accuracy and precision, light with higher levels of energy is needed. However, there is a trade-off: the light energy contained in packets called photons increases the momentum of particles. The moment we observe it, the particle already moves. "Thus more accuracy in position must be traded for less in momentum, and vice versa."[5]

It is important to realize that the uncertainty is inherent in nature and not merely the result of technological limitations. The particle simply does not possess simultaneously precise values of its position and momentum.[6] The deeper implication, however, of the Heisenberg Uncertainty principle is the recognition that the observer always intervenes in the reality that he knows. Investigations do not refer to a pristine physical world "out there." There is no such thing as a pre-theoretical sense experience that we subsequently modify or, for that matter, corrupt. Quantum theory denies the possibility of the complete separation between the observer and his observed world. By analogy, Lawrence Tribe says that the very process of legal "observation"—that is, judging—shapes the judges and those being judged.[7] "The results the courts announce—the ways they view the legal terrain and what they say about it—will in turn have

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[3] Noteworthy is the simulation software that the human brain developed through evolution such that we are predisposed to perceive certain things. As Richard Dawkins says: "Our eyes don't present to our brains a faithful photograph of what is out there, or an accurate movie of what is going on through time. Our brains construct a continuously updated model x x x" RICHARD DAWKINS, THE GOD DELUSION, 88 (2006). Optical illusions demonstrate this. RICHARD GREGORY, EYE AND BRAIN (1997). See DANIEL DENNETT, CONSCIOUSNESS EXPLAINED (1991); FRED DRETSKE, NATURALIZING THE MIND (1995).

[4] Or anti-matter.

[5] Introduction by Paul Davies in WERNER HEISENBERG, PHYSICS AND PHILOSOPHY, IX (2000). *See also* STEPHEN HAWKING, A BRIEF HISTORY OF TIME: FROM THE BIG BANG TO BLACK HOLES (1988).

[6] *Id.*, ix.

[7] Lawrence Tribe, *The Curvature of Constitutional Space: What Lawyers Can Learn From Modern Physics*, 103 HARV. L. REV. 1 (1989).

continuing effects that reshape the nature of what the courts initially undertook to review, even beyond anything they directly order anyone to do or refrain from doing."[8]

If intervention is a facticity that is equiprimordial with the apprehension of reality, then what matters is not so much the things themselves as the data that are being processed by our brains. In fact, by the inevitability of intervention, it is clear that we can no longer meaningfully talk about a "thing-in-itself." Information theory is already a recognized, albeit a relatively new paradigm. Its main proposition is that every physical system, from a stone to a microchip, contains 0s and 1s in the states of its component particles. In other words, everything is reducible to binary information. A change in state is called a "computation" just as a desktop machine computes by changing information in its memory.[9] Even more recent is the application of information theory to cosmology by Seth Lloyd of the Massachusetts Institute of Technology.[10] The universe becomes a quantum computer whose speed and memory are only limited by physical laws. The principal parameters are energy and entropy which reveal the amount of disorder and information in a system. In this way, the universe computes; it processes information. It takes energy, for instance, "to turn a 0 into a 1 by inverting a nuclear spin or switching on a transistor and entropy has a well-known relation to the number of states in a system, each of which embodies a bit."[11] The latest estimate of Lloyd is that the universe has 10^120 logical operations.

The universe is an informational system. Matter, anti-matter and even black holes can be seen as a system of binary digits. Legal systems, though observationally more indefinite than physical matter, are also reducible to information.

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[8] *Id.*

[9] J.R. Minkel, *If the Universe Were A Computer, available at* http://focus.aps.org/story/v9/st27.

[10] Seth Lloyd, *Capacity of the Universe*, 88 PHYS. REV. LETT. 237901; Seth Lloyd & Y. Jack Ng, *Black Hole Computers*, Scientific American, Nov. 2004.

[11] Minkel, *supra* note 9.

II. THE CONSTRUCTION OF THE SELF

It is said that if there is any constitutional right that has a known birthdate, it is the right to privacy. And this birth date was in the winter of the year 1890 when Samuel Warren and Louis Brandeis published in the Harvard Law Review their seminal article entitled simply "The Right to Privacy."[12] Their main proposition is summed up in what they call as "the right to be left alone"—the right against the invasion of "the sacred precincts of private and domestic life."[13] In other words, this right is territorial; it is jurisdictional in the sense that the individual is sovereign over certain areas of his life as against everything else. There is a personal space, as it were, that inheres in every person such that it must remain opaque to everyone—especially the State—unless willingly disclosed by him. This jurisdictional notion of the right to privacy was finally institutionalized in *Griswold v. Connecticut*[14] when Justice Douglas considered it as a penumbral right formed by emanations from the enumerated guarantees of the American Bill of Rights. Thus the fundamental right to privacy, though not specified in the written constitution, is nevertheless necessary as its disavowal would render the enumerated rights futile. Three years after *Griswold*, the Philippines adopted this same idea of the right to privacy in its legal system in *Morfe v. Mutuc*[15] and subsequently reaffirmed it in 1989 case of *Valmonte v. Belmonte*.[16]

To say that the right to privacy is a penumbral right is at once an admission of the difficulty, if not impossibility, of defining it. "Definition" in the sense of establishing "definiteness"—from its Latin root word *definere*, that is, to draw the limits or boundaries of—in this case—a concept. Just as we do not know at what precise point a penumbra ends, in the same way we cannot definitively identify the limitations of the right to privacy. Indeed it cannot be contained in a definition. And yet the importance and fundamentality of this right has always been proclaimed, sometimes coupled with Armageddonic divinations of the future in the event it is neglected.[17]

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[12] Samuel Warren & Louis Brandeis, *The Right To Privacy,* 4 HARV. L. REV. 193 (1890); Ken Gromley, *One Hundred Years Of Privacy*, 1992 WIS. L. REV. 1335; LOUIS FISHER, CONSTITUTIONAL RIGHTS AND CIVIL RIGHTS (1995).

[13] *supra* at 195.

[14] 381 US 479 (1965).

[15] G.R. No. 20387, 22 SCRA 242, Jan. 31, 1968.

[16] G.R. No. 74930, 170 SCRA 256, Feb. 13, 1989.

[17] *See* Charles Fried, *Privacy*, 77 YALE L. J. 475 (1968) saying that without privacy, we lose "our very integrity as persons; Edward Eberle, *The Right to Information Self-Determination*, 2001 UTAH L. REV. 965; Jed Rubenfeld, *The Right of Privacy,* 102 HARV. L. REV. 737 (1989); Ruth Gavison, *Privacy and the Limits of Law*, 89 YALE L. J. 421 (1980). Most of the privacy decisions of the Philippine Supreme Court say that invasions of the right to privacy portend an absolute state, *see* Morfe v. Mutuc, *supra* note 15; Ople v. Torres, G.R. No. 127685, 293 SCRA 141, Jul. 23, 1998.

Hence the concept itself is problematic. This becomes even more pronounced if we consider its ethnographic aspect. James Whiteman explains:

> x x x the sense of what must be kept "private," of what must be hidden before the eyes of others, seems to differ strangely from society to society. This is the point that is frequently made by citing the literature of ethnography, which tells us that there are some societies in which people cheerfully defecate in full view of others, and at least a few in which the same is true of having sex. But the same point can be made by citing a large historical literature, which shows how remarkably ideas of privacy have shifted and mutated over time. Anyone who wants a vivid example can visit the ruins of Ephesus, where the modern tourist can set himself down on one of numerous ancient toilet seats in a public hall where well-to-do Ephesians gathered to commune, as they collectively emptied their bowels.[18]

Whiteman then asks: "If privacy is a universal human need that gives rise to a fundamental human right, why does it take such disconcertingly diverse forms?"[19] If privacy is jurisdictional—a matter of marking the limits of the territory over which the individual has absolute discretion—then what are the acts and objects which are decidedly private? What separates the individual from his community? When does the police power of the state ends and the individual reigns?

The exercise of line-drawing is no doubt a complicated task.[20] However, it should be increasingly clear by now that any attempt of defining or of establishing definite limits on the right to privacy is a misguided endeavor. It is to believe in the delusional concept of the complete autonomy of the individual from the society that forms him. It is to have an almost religious faith in a reality that is not there: that beneath the words "right to privacy," there exists an *a priori* and immutable definition of it—that if rightly recognized we can achieve the best fit between positive and natural law. The conception of a unitary and atomistic self has been undermined in various fields: psychoanalysis, sociology, postmodernism, analytic philosophy and so on. The fallacy of metaphysics and theology has wasted so much time and effort such that it is always a constant reminder for us to reevaluate our premises.

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[18] James Whiteman, *The Two Cultures of Privacy: Dignity Versus Liberty,* 113 YALE L.J. 1151, 1153-54. (2004)

[19] *Id.* at 1154.

[20] The right to privacy as a nebulous concept is discussed in Whiteman, *supra* note 18; Gromley, *supra* note 12; Gavison, *supra* note 17; Daniel Solove, *Conceptualizing Privacy,* 90 CAL. L. REV. 1087 (2002); Lee Goldman, *The Constitutional Right to Privacy*, 80 DENV. U. L. REV. 601 (2006).

To search for a definition of the right to privacy is therefore to put the individual out of context. It is to neglect the constitutive space that he inhabits. The quintessential characteristic of reality is interpenetration: everything overlaps. Identities are made within the space and time where they are situated. Space—everything that surrounds an individuality—not only includes the physical universe, but equally important is the collection of social entities: other people, institutions, culture, paradigms, ideologies, *ad infinitum*. Time—because one is inevitably and inexorably predetermined by history and evolution. In other words, those events that already occurred in the past for which one had no participation—which will then influence the present and then the future. Through time, we have evolved to have material parameters that condition, and continue to condition, our being. And as enunciated in the Theory of Relativity, space and time are one; any alteration of space is simultaneously an alteration of time and vice versa. Clearly, free will is situated. Laws, or more generally, norms—those which impel, in varying degrees, certain social beings to act in a certain way—are never brought into existence by a singular and completely autonomous will, but by the complex interaction of the elements that constitute space-time.

The self, on which the right to privacy is predicated, is thus a spatio-temporal construct. It is made, not born; in fact, it is continuously being made, for space-time is always dynamic. The self *per se* is a dynamism. The actions of all the elements that surround the self continuously influence the latter; they construct, reconstruct, obliterate, mitigate and aggravate. Lawrence Tribe, extending the postulate of the Theory of Relativity that space-time is curved and hence dynamic, says that the space of constitutional law is similarly warped in that the actions of legal actors also curve and alter their legal landscape.[21] Important judicial decisions, for instance, of the stature of *Marbury v. Madison*[22] or our local case of *Angara v. Electoral Commission*,[23] effectively changed the *de facto* power distribution among the branches of government as the Court assumed for itself the capacity to nullify the act of a *de jure* co-equal body. Indeed the environment where we live is not a neutral background. The inhabitants thereof can also change it in the same way as the environment changes its inhabitants.

The self is therefore in a constant flux, a somewhat Sartrean "hole in being"—never complete, never achieving fullness. Consequently, the right to privacy is also a changing penumbral precept. Its limitations are at most

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[21] Tribe, *supra* note 7.
[22] 5 US 137 (1803).
[23] G.R. No. 45081, 63 Phil. 161, Jul. 15, 1936.

temporary, if not arbitrary. Balancing is always a constant affair of society. And because reality, in its conceded indefiniteness, is further made more indefinite by the aspect of human intervention—that changing self—we are only working on probabilities. The common denominator of this stochastic reality is information, that which is being fed to the observer, the self. The right to privacy is thus a matter of information.

III. THE SELF AND THE RIGHT TO PRIVACY

By virtue of the dynamism of space-time, it becomes problematic to speak of the separation between the self and the world. The lines are blurred, if not inexistent from the very beginning. The traditional public and private divide in legal theory is illusory; needless to say, the public has trespassed the private sphere since time immemorial. The public constructs the private and vice versa. The two spheres are in an inextricably dialectical relation. It is more feasible, however, to speak of limitations on the right to privacy. This right, being a legal concept, is more normative than descriptive: it deals with the question of how persons should comport themselves in a society. More particularly, as a regulatory notion, it is concerned with the balance between individual freedom and everything else, but most especially the state. It does not matter if there is no metaphysical line of separation between a person and his world. The fact is we make distinctions nonetheless.[24] These distinctions are themselves primarily normative[25] or more specifically, legal. These are ideas with binding force; they regulate people and society.

The construction of the self is based on one's participation in the world. In other words, it is grounded on human intervention that is concomitant with the act of observation. What matters then are the data that

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[24] Holmes could not have said it better in his article *The Theory of Torts*, 7 AM. L. REV. 652 (1873), reprinted in 44 HARV. L. REV. 773, 775 (1931):

> The growth of law is apt to take place in this way: Two widely different cases suggest a general distinction which is a clear one when stated broadly. But as new cases cluster around the opposite poles, and begin to approach each other, the distinction becomes more difficult to trace; the determinations are made one way or the other on a very slight preponderance of feeling, rather than articulate reason; and at least a mathematical line is arrived at by the contact of contrary decisions, which is so far arbitrary that it might equally well have been drawn a little further the one side or the other. The distinction between the groups, however, is philosophical, and it is better to have a line drawn somewhere in the penumbra between darkness and light, than to remain in uncertainty.

[25] I say "primarily" because, in the same manner, it is impossible to draw the line between the descriptive and the normative.

inform the observer. *Information matters*. With the attenuation of the boundaries between the self and the world, the process of *information transfer* is indubitable. At this point, it is important to make a qualification: while the boundaries are not that clear, there is still separation from an observational standpoint. The act of observation itself presupposes such a distinction. When we observe, we performatively acknowledge that we are separate from what we are observing. To say otherwise is clearly absurd, for it effectively denies the process of observation itself. Complete fusion between the self and the world means that the observer is totally absorbed in what he is observing. As a result, there will be nothing to observe. Hence, to observe is necessarily to extricate one's self from the world though we know, and it makes more sense, to acknowledge that such separation is never absolute.

As mentioned, the right to privacy is predicated on the idea of a "self." In the first place, to speak of a "self" is to recognize one's separation from the rest of the world. Hence, the notion of the self already carries with it the notion of limits. It follows that to speak of privacy is simultaneously to speak of its limitations. Yes, the demarcations are indeterminate, but the lines we draw—though almost fictitious and have no absolute grounding—are necessary for the accommodation of individual freedom as against society which includes the state. It must be reiterated that this line-drawing is essentially a normative enterprise. We do so to regulate the interrelations between social beings as there will always be norms governing collectivities. Robert Cover says it well: "We inhabit a *nomos*—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void."[26] What we need to do is to drop the delusion that the norms we create are always grounded on a metaphysics, a reality that is "out there" waiting to be discovered. We have to reconcile ourselves to the sheer indeterminacy and temporary nature of the normative standards that we create. In the end, there can be no certainty as to when a right or an obligation begins and ends. Thus when Justice Douglas describes the right to privacy in *Griswold* as "penumbral"—well, I guess he already said much.

The right to privacy, therefore, as a precept of law, is a question of normative distinctions. Law, by its very nature, always distinguishes. And these distinctions become determinative of the degree of freedom accorded to the individual. In *Ople v. Torres*,[27] for instance, the Philippine Supreme Court nullified Administrative Order No. 308 issued by then President Fidel

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[26] Cover, *supra* note 1. *See also* PETER BERGER, THE SACRED CANOPY (1967); PETER BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY (1966); JOHN GAGER, KINGDOM AND COMMUNITY (1975); KARL MANNHEIM, IDEOLOGY AND UTOPIA (1936).

[27] G.R. No. 127685, 293 SCRA 141 Jul. 23, 1998.

V. Ramos establishing a "National Computerized Identification Reference System." One of the grounds relied upon was the alleged governmental intrusion on the "citizenry's protected zone of privacy."[28] Now such a ruling was only possible through the implicit distinctions made by the court as to what kinds of information are "personal" and what are those that are not—hence, the much repeated phrase of a "protected zone of privacy" in Justice Puno's *ponencia*. By the realization that the administrative order may potentially cover certain "personal" information, Puno thought that the "protected zone" may be at stake. He then insisted that the "administrative order redefines the parameters of some basic rights of our citizenry *vis-à-vis* the State." Apparently, he is wary of the new distinctions that the administrative order implicitly creates, as against the distinctions he has in his mind between what is private and public. Puno then ruled that the said order is not narrowly tailored to meet the interest of facilitating governmental transactions. Thus the administrative order becomes unconstitutional. Clearly, the claim of freedom for the individual is at the mercy of the distinctions we make. The mobility of the lines we draw seems to be a socio-legal reality that we implicitly or unconsciously affirm, notwithstanding what most of us expressly declare, which is the religious dogma of divine universals along with its earthly counterpart—natural law.

Strictly speaking, it is inaccurate to say that the right to privacy is a matter of "line-drawing." If we use "line" in the figurative sense to describe our normative distinctions between the freedom of the individual and the freedom of everything else,[29] then our metaphor should not be linear but a very convoluted figure, because every "personal" thing is more or less imbued with a public aspect. More appropriately, the right to privacy is concerned with the delicate task of *balancing* the individual and the rest of the constituents of space-time. Our normative distinctions serve as the fulcrum of that balance.

How do we become aware of these distinctions? The answer: by information. It is in the process of information transfer that we can have consciousness of our choices, actions, omissions and distinctions. While we exist, we are condemned to be observers. We can never know if our distinctions are invidious or just unless there had been an information transfer that induced us to make such value-judgments. Moreover, in the process of information transfer, noise is always a significant variable. Put

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[28] The other reason was the usurpation of the legislative powers of Congress.

[29] This includes not only people but other non-living entities as well: organizations, institutions, ideologies etc.

simply, noise is irrelevant and meaningless data. It is a quantifiable variable in computer science that disrupts information transfer. The central paradigm of classical information theory is the engineering problem of the transmission of information over a noisy channel. Information Theory is considered to have been founded by Claude Shannon in his 1948 seminal article entitled "A Mathematical Theory of Communication."[30] In this article, he explains:

> The fundamental problem of communication is that of reproducing at one point either exactly or approximately a message selected at another point. Frequently the messages have *meaning*; that is they refer to or are correlated according to some system with certain physical or conceptual entities. These semantic aspects of communication are irrelevant to the engineering problem. The significant aspect is that the actual message is one *selected from a set* of possible messages. The system must be designed to operate for each possible selection, not just the one which will actually be chosen since this is unknown at the time of design.[31]

The idea of the inevitability of noise in information transfer is normally attributed to the level of communications technology. One cannot transfer data perfectly without reckoning with the constraints of space and time. The rates of information transfer vary, for instance, between those in fiber optics and as when visual information is transmitted from our eyes to our brain via our optic nerves. From the general standpoint of observation, however, even noise can be considered as relevant data. What may be noise in communications technology may still tell us something about for example, the nature of information transfer itself, because we are no longer limited to the transmission of a particular data from one point to another as in classical information theory. Everything, in other words, can tell us something.

Furthermore, there is that aspect of human intervention that is implied in the process of observation. Information transfer has already been conditioned by the observer's entry to the system that he is observing. Indeed, there is informational uncertainty. At the outset, we used the Heisenberg principle of Quantum Mechanics to illustrate this point. One cannot meaningfully talk about what, for example, an electron is doing between observations because it is observations alone that create the reality of the electron. This uncertainty, however, does not entail informational

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[30] Claude Shannon, *A Mathematical Theory of Communication*, 27 THE BELL SYSTEM TECHNICAL JOURNAL 379 (1948).

[31] *Id.*, at 379.

anarchy. The fact that we are able to know these variables or principles implies that we are still able to cognize reality, though not in a deterministically objective manner. Like Quantum Mechanics we are able—as a general epistemological proposition—to estimate the relative probabilities of events. In lieu, therefore, of a deterministic view of information transfer, ours is probabilistic or stochastic. Substituting "information" for "electron," we can quote here Paul Davies:

> What then is an electron, according to this point of view? It is not so much a physical thing as an abstract encodement of a set of potentialities or possible outcomes of measurements. It is a shorthand way of referring to a means of connecting different observations via the quantum mechanical formalism. But the reality is in the observations, not in the electron.[32]

The right to privacy which is fundamentally the normative distinctions that we create through information transfer, is therefore stochastic. It may be conceived as a probabilistic mathematical function with noise as one of its random variables. There can be only one obvious conclusion at this juncture: privacy is an ever changing thing. Its limitations continuously and relentlessly change—conditioned by such variables as noise—"variables" in the sense that they too vary.

IV. GLOBAL SELF AND INFORMATION EXPLOSION

An enlarging world is informationally significant. The extent of what we consider as "world"—the system that we are observing—determines information transfer. This world is actually space-time, that dynamic arena where events occur—the source of our data. When space-time expands, the rate of information transfer rises. Stimuli multiply. The databases, as it were, are upgraded. There is a plethora of data that disturbs the unity of the self. The multiplication of sources carries with it a torrent of myriad and often conflicting information. Inevitably, the lines of separation between the self and the world are agitated. From one's local position—in one's own town or country perhaps—those lines are more or less settled; but when boundaries blur, when national becomes transnational, when different cultures reveal themselves, when conflicting norms clash, the self becomes unsettled. And when previously there were, to paraphrase Justice Holmes, more or less divided fields of black and white, the collapse of national boundaries dissolved those divisions and instead, everything now are found to terminate

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[32] Davies, *supra* note 5.

in a penumbra gradually shading from one extreme to the other.[33] This phenomenon which continues to this day is called globalization. The local self has now been globalized. With it, the right to privacy has also been disturbed.

Globalization has been closely associated by the rise of science and technology. And rightly so: they are the ones that made the entire process possible. Communication and travel has been reaching higher levels through cellular phones, the internet, planes and even rockets. The development of cyberspace is one of the defining events of globalization for anyone can communicate information about himself or just about anything through this medium. Walls of communication collapse and continue to collapse. The defining characteristic therefore of globalization is information explosion.

The multiplication of informational sources has been of such magnitude that no observer, even with the aid of machines, can fully process all the information derived from them. Nevertheless, globalization radically changed the way we view ourselves and consequently, our notions of what is "private." Technology amplified the power of access—increasing number of entities are gaining or improving their capacity to acquire information. The problem then arises: for what has been normatively considered as belonging to a zone of privacy where a person exercises unlimited control, others can already access. Thus the normative distinctions that were created in a legal system are now being challenged by others distributed over different parts of the world, belonging to different normative systems. Moreover, the culprits are various. They do not have collective identity; they are not organized. They just acquired the power of access to information granted to them by the phenomenon of globalization.

Hence, there is diminution of control. The internet is quite telling of this continuing phenomenon. Nobody owns the internet; no government can regulate that entire network of informational sources. Of course, some governments may penalize persons within its jurisdiction for certain acts like accessing prohibited websites as in China or those that promote child pornography. Granted that some municipal governments can successfully do this, nonetheless, the existence of the internet still goes on—because its participants come from everywhere around the world. They cannot halt the host of operations in cyberspace. They cannot impose rules as to how certain data will be transmitted. The net cannot be stopped.

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[33] *See* Springer v. Gov't of the Phil. Islands, 277 US 189, 210 (1928).

Globalization created a novel space-time that brooks no control. This space-time is diverse, for its constituents come from different backgrounds with different normative systems. Within itself, innumerable processes of information transfer occur, which in turn become causes for change. Hence, this "global space-time" is continually evolving and mutating like an alien organism. The world "alien" is fitting because it continuously infringes upon the space that is considered "personal" by local legal systems. Whereas in traditional privacy cases, the primary concern is the intrusion of the local state in the "protected zone", now that attention has been confused with the entry of that unregulated and amorphous global collectivity, with even more insidious and surreptitious means of accessing information. Incidentally, one can feel Justice Puno's fear of uninhibited informational access in *Ople*:

> Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens. It is timely to take note of the well-worded warning of Kalvin: "the disturbing result could be that everyone will live burdened by an unerasable record of his past and his limitations. In a way, the threat is that because of its record-keeping, the society will have lost its benign capacity to forget.[34]

Indeed there have been numerous calls to mitigate this intrusion.[35] How it will be done is still an unresolved issue. The limitations of privacy established by the local legal system is now unsettled.

The right to privacy is an informational matter. But, as mentioned, it is also a matter of individual freedom—that is, the liberty to do as one chooses as an autonomous self. The question of what degree of autonomy an individual possesses in light of the blurred separation between the self and the world—is another matter. Besides, it is an intractable question. Furthermore, this is in face of the transience of the normative distinctions and limitations that we establish. However, we do know that there is such an autonomy, otherwise observation—at least, the reality of this process is something we can ascertain—will not be possible. Even beyond the locality where the self is positioned, the exercise of individual freedom must be

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[34] Ople, *supra* note 27. Citations omitted.

[35] *See* Sandra Petersen, *Your Life as an Open Book: Has Technology Rendered Personal Privacy Virtually Obsolete?,* 48 FED. COMM. L. J. 163 (1995); Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN. L. REV. 1193 (1998); Christopher Carlton, *The Right to Privacy in Internet Commerce: A Call for a New Federal Guidelines and the Creation of an Independent Privacy Commission,* 16 ST. JOHN J. LEGAL COMMENT 393 (2002); Madhavi Sunder, *Cultural Dissent*, 54 STAN. L. REV. 495 (2002).

guaranteed. This is the *raison d'être* of the right to privacy. According to Jed Rubenfeld, "[t]he principle of the right to privacy is not the freedom to do certain, particular acts determined to be fundamental through some ever-progressive normative lens. It is the fundamental freedom not to have one's life too totally determined by a progressively normalizing state."[36] We can expand this statement by saying that the right to privacy is the freedom not to be wholly determined by others—not only the state, but everything that is outside one's self including the unregulated space-time created by globalization. It is to defy the determinism of space-time that an individual inhabits. Privacy is the right to be an informational source; it is the freedom to create one's self, to generate one's own information to be transferred to the world.

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[36] Rubenfeld, *supra* note 17.