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Of wicked wizards and indigo jackals: legal regulation of privacy and identity in cultural comparative perspective.

Burkhard Schafer

1. Privacy between universalism and localism[1]

In her book "Überleben in Freiräumen, Marie Theres Tinnefeld offers us twelve vignettes that show the interdependence between architecture, ecology and law to create "survival spaces", spaces conductive and necessary for human flourishing. She develops a normative anthropology, a conception of human flourishing and of what humans need to live well. On the basis of such a normative anthropology, our Human Rights canon becomes intelligible. It prescribes the boundaries that states are obligated to create - and themselves to observe and respect – to create these "free spaces" within which human autonomy and self-determination can be realised.

At this point however, we encounter an inevitable tension. On the one hand, Human Rights claim universal validity, expressed in particular in the Universal Declaration of Human Rights. From this perspective, they are grounded in human nature and express cultural universals that transcends national boundaries, traditions and jurisdictions. On the other hand, the book traces back the specific expression that the right to privacy took, and indeed the specific understanding of the role of "rights" and the law, to highly contingent historical developments in Europe. Discussed are the role of Greek philosophy and later Christianity, whose ideas and concepts then became secularised and transformed during the Enlightenment, but still show traces of their origin in religious discourse. Other contingent events also played a role in

[1] This paper benefited greatly from working with Rowena Rodrigues during her time in Edinburgh. Some of the research that informs this paper come from her PhD thesis, Rodrigues, Rowena, "Revisiting the legal regulation of digital identity in the light of global implementation and local difference", University of Edinburgh, 2011; Research for this paper was supported by Creative Informatics AH/S002782/1; As per University of Edinburgh policy, for the purpose of open access, the authors have applied a 'Creative Commons Attribution (CC BY) licence to any Author Accepted Manuscript version arising from this submission.

shaping the specific form the *legal* expression of Human Rights has taken – the European wars, the history of oppression and intolerance, feudalism and absolutism against which they are developed as a foil in a dialectical process over centuries. This then raises an obvious question: How can it be that a universalist conception of human flourishing can be so intimately linked to contingent historical developments? If the expression of these rights is so visibly mediated by local cultural expressions that encompass architecture, gardening, religion, literature, and music, why should we assume that they transcend these contexts? These cultural traditions all provide modes of thinking, metaphors and analogies that are harnessed by Tinnefeld to bring her analysis of "free spaces" to life – but in doing so also create the risk to tie the discussion even more closely to a uniquely European understanding.

One part of the answer that Tinnefeld explored in her writing is the tension between privacy and other fundamental Human Rights such as Freedom of Speech. Even within Europe, and even more so when we expand our perspective to include also the US, different jurisdictions resolve these tensions in different ways, sometimes emphasising e.g. privacy, sometimes freedom of speech, some put more trust in the benevolence of state authorities and permit greater intrusion in the name of the protection of security, others less so. How these tensions are resolved is then also shaped by different historical experiences, cultural norms and social expectations. For instance, countries where state abuse of surveillance powers is still in living memory may strike the balance differently from those where concerns about state surveillance are more abstract and theoretical, something that might help to explain different approaches to data protection in the UK and Germany respectively. While this opens up the space for cultural differences and contextual sensitivity, we can ask if there are more radical ways to rethink privacy from a global perspective.

Technology companies operate globally, and with the majority of social media users in the "global south", the question whether this ever-growing group of users are adequately protected by western-centric privacy conceptions is extremely pressing. Comparative lawyers have for a long time warned of the dangers in transplanting legal concepts across cultural boundaries.[2] Just as with biological transplants, legal transplants can lead to autoimmune reactions, where the imported concept is rejected by the receiving body, and either rendered non-functional, or

[2] So e.g. Legrand, Pierre. "The impossibility of 'legal transplants'." *Maastricht journal of European and comparative law* 4.2 (1997): 111-124; Legrand, Pierre. *Negative Comparative Law: A Strong Programme for Weak Thought*. Vol. 167. Cambridge University Press, 2022.

worse, dysfunctional.[3] For the GDPR and the "Brussel effect" that saw countries outside Europe instigating similar legislative projects, this provides a challenge.[4] The global reach of data-hungry technology companies makes the idea of learning from successful regional initiatives prima facie tempting, and emphasising local cultural differences can and has been used as a strategy by them to avoid more stringent legislation in emerging markets.[5] But the discussion on legal transplants also acts as a reminder that the success of a law in one legal culture does not guarantee the success of its transplant into a different environment.

More recently, academics have begun to "de-colonise" the privacy discourse, and to develop more inclusive privacy policies.[6] There are (at least) two dangers that the unthinking transfer of western privacy conceptions to other cultures face: The first is the danger that the wider legal, social, cultural and political environment within which they find themselves render them ineffective – underenforced, ignored or circumvented. This can happen when the inscribed normative assumptions create a mismatch with local social norms. Rodrigues describes one such example: In rural India, the winner of a competition receives a smartphone from a large, US based technology company, that uses its Terms and Conditions, designed with US users in mind, also in this environment. One of the conditions is a prohibition to share login credentials. While this may make sense for users in New York or London, in the Indian village it would equate to social suicide: as the only smartphone in the village, there would be a strong social expectation of sharing this vital asset and turning individual property to something more akin to communal property. The Indian user, facing a conflict between the social reality of communal village live and the terms and conditions hidden deeply in a legal document, will in all likelihood not comply with the stipulated formal rules. This however means that being technically in breach of their contract, the technology company can now offload all the risks to

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[3] The term legal transplant was coined in 1974 by Alan Watson, who saw it as a largely benign and affiant driver of legal change Watson, A. (1974). *Legal transplants: an approach to comparative law*. University of Georgia Press; see also Cairns, John W. "Watson, Walton, and the history of legal transplants." *Ga. J. Int'l & Comp. L.* 41 (2012): 637. The metaphor however allowed subsequent commentators also a more critical use of the term as potentially dangerous. So e.g. Teubner, Gunther. "Legal irritants: good faith in British law or how unifying law ends up in new divergencies." *The modern law review* 61.1 (1998): 11-32.

[4] On the Brussel effect see Anu Bradford, 'The Brussels Effect' (2012) 107(1) *Northwestern University Law Review* 1–67. Specifically for data protection see Bygrave, Lee A. "The 'Strasbourg Effect'on data protection in light of the 'Brussels Effect': Logic, mechanics and prospects." *Computer Law & Security Review* 40 (2021): 105460.

[5] See e.g. Wong, Pak-Hang. "Cultural differences as excuses? Human rights and cultural values in global ethics and governance of AI." *Philosophy & Technology* 33.4 (2020): 705-715; Birhane, Abeba. "Algorithmic colonization of Africa." *SCRIPTed* 17 (2020): 389.

[6] See e.g. Arora, Payal. "Decolonizing privacy studies." *Television & New Media* 20.4 (2019): 366-378; Couldry, Nick, and Ulises A. Mejias. "Data colonialism: Rethinking big data's relation to the contemporary subject." *Television & New Media* 20.4 (2019): 336-349.

the user. A much better outcome would have been to require the company to design methods for safe sharing that respect communal values, buttressed by T&Cs that do not force their customers into a choice between unacceptable (legal) risks or unacceptable behaviour.[7]

Even more worrying than the possible inefficiency of transplanted legal concepts is the possibility that they actively cause harm. In the privacy field, this is a challenge raised by authors such as MacKinnon and Nussbaum.[8] Nussbaum, analysing the way in which the privacy discourse was instrumentalised in India by the courts, argues that the focus on privacy reinforces a division between the private and the public that in a patriarchal society exposes women to unacceptable risks, including, ironically, privacy risks. Nussbaum notes that we can discern conceptions of privacy in Indian legal culture that predate colonialism, and are therefore not themselves legal transplants.[9] Spatial privacy has been recognized in Hindu law, with ancient cases discussing for instance how installing new windows or doors that enable intrusive views on someone's home impact on a customary "right of privacy".[10] While these could be seen as evidence for a universalist conception of privacy. However, these privacy conceptions were often tied to a social understanding of modesty that was highly gendered. Building on the work of MacKinnon, she argues that the distinction in law between public and private spheres has historically been instrumentalised to deprive women of the equal protection of the law. In the western tradition, this can be traced back to the Aristotelian distinction between *polis* and the *oikos*. In the *polis*, the public sphere, men act as "equals among equals", subject to public law and the requirements of justice. In the private sphere by contrast, men's rule is unconstrained by public laws, so that they rule like kings.[11] Privacy in these contexts means the retreat of the state from its role to guarantee liberty for all. For India, Nussbaum

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[7] Rodrigues op cit p. 66; Chavan, Apala Lahiri. "A dramatic day in the life of a shared Indian mobile phone." *International Conference on Usability and Internationalization*. Springer, Berlin, Heidelberg, 2007; Konka, K. "Indian needs—Cultural End User Research in Mumbai in Eds. Lindholm, C., & Keinonen, T.(2003)." *Mobile Usability: How Nokia Changed the Face of the Mobile Phone* (2000)..

[8] MacKinnon, Catharine A. *Feminism unmodified: Discourses on life and law*. Harvard university press, 1987; Nussbaum, Martha C, "Is Privacy Bad for Women?", Boston Review (2020) at <https://boston-review.net/world/martha-c-nussbaum-privacy-bad-women>

[9] She cites in particular Ahmed-Ghosh, Huma, "Preserving Identity: A Case Study of Palitpur," in Zoya Hasan, ed., *Forging Identities* (Boulder, Co.: Westview Press, 1994), pp. 169-87

[10] Kane, Pandurang Vaman. *Hindu customs and modern law*. University of Bombay, 1950. P 99-100 as cited in Nussbaum, op cit.

[11] This distinction was at the centre of Arendt, Hannah. *The human condition*. University of Chicago press, 2013 p. 22ff, though for her, arguably, the distinction was benevolent. For a feminist critique along the lines outlined here see Long, Christopher Philip. "A fissure in the distinction: Hannah Arendt, the family and the public/private dichotomy." *Philosophy & social criticism* 24.5 (1998): 85-104.

shows the same dynamic. The 9th chapter of the Manusmṛiti for instance described describes women as inherently untrustworthy, and in need of constant surveillance in the confines of the household:

> 2. Day and night woman must be kept in dependence by the males of their families, and, if they attach themselves to sensual enjoyments, they must be kept under one's control.
>
> 3. Her father guards her in childhood, her husband guards her in youth, and her sons guards her in old age; a woman is never fit for independence
>
> 5. Women must particularly be guarded against evil inclinations, however trifling (they may appear); for, if they are not guarded, they will bring sorrow on two families.

The Manusmṛiti (Laws of Manu) is one of the oldest and most important Sutras that lay down rules for appropriate social behaviour.[12] While not technically speaking a legal text (in the sense of officially enforced laws issued by a sovereign), the multi-authored work nonetheless gives a detailed account of social norms over an extended period of Indian history. It was also one of the first Sanskrit texts to be translated into English in 1776. This allowed it to become also an important tool for of the East India Company, facilitating the governance of their enclaves through the construction of a Hindu law codified along western models.[13] According to Nussbaum, this co-optation of traditional legal ideas into the colonial legal system brought the dangers of legal transplants to the fore: The European conception of privacy – an Englishman's home is his castle – acted so to speak as an "accelerant" to the social rules of pre-colonial Indian society, and created in the process a toxic (auto-immune ?) reaction that further disempowered women. "Privacy" in this environment turned the domestic sphere into a lawless domain: "privacy" became a tool to justify the refusal of the state to intervene in abusive domestic relations.

Following Nussbaum, this too ultimately served the ends of the colonial masters: While Indians became disempowered in the public sphere, the "sweetener", at least for men, was the promise that they now could rule like kings in their own household - "the last pure space left to a

[12] Olivelle, Patrick. "Dharmaśāstra: A Literary History." *The Cambridge Handbook of Law and Hinduism* (2009): 112-143.
[13] Romila, Thapar. "Early India: From the origins to AD 1300." *University of California Press, Berkeley* (2002). P. 2-3

conquered people."[14] The combination of codified English privacy conceptions with social norms resulted in increased surveillance of and control over women in the domestic sphere.

This withdrawal of the state from the enforcement of laws in the context of the home under the banner of "privacy" outlasted the empire, and became a legal trope also in post-colonial India. Nussbaum discusses in particular how post-independent courts in India evoked privacy to protect the husband's right to "restitution of conjugal rights" – a legal action by the husband that petition the court to restore his access to intercourse against an unwilling partner.[15]

This idea of forcible restitution of conjugal rights through a tort law action was British in origin too, but had found its way into the Hindu Law of Marriage. Nussbaum shows how the concept of "marital privacy" protected this concept from constitutional challenges. Sareetha Subbaiah, a famous actress, was sued for restitution of conjugal rights by her husband, Venkata. She had married him while still a high school girl, and the two had separated before her career began. In what seemed initially a triumph of constitutional protections, including a constitutional right to privacy, over pre-independence family law, Justice Choudary declared the relevant section of the Hindu Marriage Act unconstitutional.[16] While a constitutional right to privacy had been recognised in earlier cases of police surveillance, an application to the control of husbands over their wives was unprecedented.

> "The remedy of restitution is "a savage and barbarous remedy, violating the right to privacy and human dignity guaranteed by Art. 21 of the Constitution."

Drawing extensively on American case law and legal theory, he continued:

> "[I]t cannot but be admitted that a decree for restitution of conjugal rights constitutes the grossest form of violation of an individual's right to privacy. Applying Professor Tribe's definition of right to privacy, it must be said that the decree for restitution of

[14] Nussbaum op cit p. 10 where she cites Tanika Sarkar, "Rhetoric Against Age of Consent: Resisting Colonial Reason and Death of a Child-Wife," *Economic and Political Weekly* (September 4, 1993): 1869-78 to show how "ancient traditions" that gave males unfettered control where invented at that time by Hindu nationalists and, paradoxically, enforced and entrenched through colonial law.

[15] See e.g. Agarwala, Raj Kumari. "Restitution of Conjugal Rights under Hindu Law: A Plea for the Abolition of the Remedy." *Journal of the Indian Law Institute* 12.2 (1970): 257-268.
See also Uma, Saumya. "Wedlock or wed-lockup? A case for abolishing restitution of conjugal rights in India." *International Journal of Law, Policy and the Family* 35.1 (2021): ebab004;

[16] T. Sareetha v. T. Venkata Subbaiah, AIR 1983 Andhra Pradesh 356, cited in Nussbaum op cit at p. 14. She also discussed this case in her book "Sex and Social Justice" (New York: Oxford University Press, 1999).

> conjugal rights denies the woman her free choice whether, when and how her body is to become the vehicle for the procreation of another human being. Applying Parker's definition, it must be said, that a decree for restitution of conjugal rights deprives a woman of control over her choice as to when and by whom the various parts of her body should be allowed to be sensed. Applying the tests of Gaiety and Bostwick, it must be said, that the woman loses her control over her most intimate decisions. Clearly, therefore, the right to privacy guaranteed by Art. 21 of our Constitution is flagrantly violated by a decree of restitution of conjugal rights."

While this decision seemed to demonstrate the liberating potential of a constitutional right to privacy, for Nussbaum it was a pyrrhic victory at best. Grounding the decision in privacy rights enabled subsequent courts to re-affirm the notion of marital privacy, and so undercut the reasoning completely. Just five months later, the Delhi High Court was therefore able to evoke privacy to come the exact opposite result in a new case (my highlights):

> 'Introduction of Constitutional Law in the home is most inappropriate. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for. **In the privacy of the home** and the married life neither Art. 21 nor Art. 14 have any place. In a sensitive sphere which is at once intimate and delicate the introduction of the cold principles of Constitutional Law will have the effect of weakening the marriage bond.
>
> —*Delhi High Court, in* Harvinder Kaur v. Harmander Singh*, 1984*[17]

A year later, the Supreme Court would affirm the judgment of the Delhi High Court, and with that the constitutional legitimacy of restitution of conjugal right.[18] Nussbaum concludes:

> "In short, anyone who takes up the weapon of privacy in the cause of women's equality must be aware that it is a double-edged weapon, long used to defend the killers of women."[19]

[17] https://indiankanoon.org/doc/191703/
[18] Smt. Saroj Rani vs Sudarshan Kumar Chadha on 8 August, 1984 https://indiankanoon.org/doc/1382895/
[19] Nussbaum op cit p. 10

We find the same ambiguity of the role of privacy also at play in a field particularly close to Tinnefeld's heart, the design and layout of gardens. We know of the Hindu gardens of ancient India only from descriptions, as none survived the rise of the Mughal Empire.[20] The Rajpul rulers however incorporated ideas from the Mughal gardens into their design. In both we find the expression of the architectural concept of the Zenana, (literally "belonging to women,") which refers in this context to a part of a dwelling separated by walls which is reserved for the women of the household.

Zenana are the build expressions, or "enforcement by architecture", of the concept of purdah, the seclusion of women in some Muslim, Sikh and Hindu societies. When transferred to the garden environment, there too walls create enclaves for women only (with access rights, inevitably, for male relatives). Herbert, in "Flora's Empire" reports that one of the design prescriptions for these garden walls was the that they had to be high enough that a man standing on an elephant could not peek over them.[21]

How can we make sense of such a requirement? Is it a privacy enhancing technology that protects women from the male gaze?[22] Or are these prison walls, "gilded cages" in the words of Herbert's source, the British travel writer Fanny Parks?[23] Depending on one's perspective, every wall can be a protection to keep the outside world at bay, or a prison wall that confines those who are inside.

Nussbaum's analysis has not been without criticism, and her case against privacy may be weaker than this paper may have indicated so far. Vakharia, in her reply to Nussbaum argued forcefully that more recent Indian Supreme court decisions such as Justice KS Puttaswamy v. Union of India (Puttaswamy) and Navtej Singh Johar v. Union of India affirmed a constitutional right to privacy with potentially far reaching consequences for woman's rights

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[20] Bowe, Patrick. "Ancient Hindu Garden Design." *Garden History* 44.2 (2016): 272-278.

[21] Herbert, Eugenia. "Flora's Empire: British Gardens in India (Philadelphia, 2011) p. 12

[22] This line of argument that sees these conventions as protecting, or even empowering, can be found e.g. in Feldman, Shelley, and Florence E. McCarthy. "Purdah and changing patterns of social control among rural women in Bangladesh." *Journal of Marriage and the Family* (1983): 949-959 or, with a focus on dress codes, Mir-Hosseini, Ziba. "Women and politics in post-Khomeini Iran." In *Women and politics in the third world* (1996): 145-173

[23] So White, Elizabeth H. "Purdah." *Frontiers: A Journal of Women Studies* (1977): 31-42; Haque, Riffat. "Gender and Nexus of Purdah Culture in Public Policy." *South Asian Studies* (2010). An account that traces the development through literature, from a (potentially) empowering beginning to a oppressive presence, see Asha, S. "Narrative Discourses on Purdah in the Subcontinent." *ICFAI Journal of English Studies* 3.2 (2008): 41-51.

in India.[24] Similarly, Sarkar argued in a comprehensive historical analysis of privacy conceptions in Indian culture and history that while there are indeed court decisions that misused privacy to entrench visions of the ideal family, these are demonstrably "wrong decisions" on both doctrinal constitutional and historical-sociological grounds, and should therefore not be taken as a statement of the role of privacy in Indian law, nor as a reason to doubt its liberating potential.[25]

This paper does not aim to resolve these issues. Neither does it offer a grand theory of privacy in non-western cultures. Rather, as a provocation, it will give three vignettes, based on popular Indian folk tales and religious "sagas".[26] The hope is that these will help to build a context sensitive and culture specific understanding of privacy that at the same time helps finding common ground between different traditions. One function of fables, myths and sagas is to find a shared vocabulary that is intuitively appealing, and in this way creates a type of understanding that is also conductive to trust, overcoming the issues identified above in the story of the "Indian smart phone" and its T&Cs

2. Telling stories about privacy

The aim of this section is to show how concepts from pan-Indian fables and soties, and also religious imagery, can shed light on the how conceptions of identity and privacy can be reconstructed that can underpin legal and other regulatory solutions to online identity assurance.

While there have been attempts to describe Indian culture as communitarian, collectivist or non-individualist, the better empirical studies qualified these typically as "tendencies", not

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[24] Vakharia, Priyanshi. "Unveiling Privacy for Women in India." *Law Rev. Gov't LC* 10 (2019): 37. Similarly Bhatia, Gautam, The Constitution and the Public/Private Divide: T. Sareetha vs Venkatasubbaiah (July 30, 2017). Available at SSRN: https://ssrn.com/abstract=3010972 or http://dx.doi.org/10.2139/ssrn.3010972 in a similar vein . On the other hand, supporting Nussbaum, see Mookherjee, Ishani. "Individual's Right to Privacy: Panchayati Eclecticism and Feminist Constitutionalism." *J. Indian L. & Soc'y* 8 (2017): 43.

[25] Torsha Sarkar, 'Privacy through the Ages: India's Privacy Jurisprudence in Gender and Sexuality Rights' (2021) 12(2) Journal of Indian Law and Society 53

[26] This term is borrowed from the theological writing of Karl Barth, and aims at a more neutral characterisation than "myth" or "mythology" when talking about religious texts in their narrative, story-telling dimension. For Barth, Genesis provides a "saga of creation", a text where the answer to the question "is it literally true" is not "right" or "wrong", but "this is a misguided question that misses the point of the story entirely. See Barth, Karl. *Church Dogmatics Study Edition 13: The Doctrine of Creation III. 1 § 40-42*. Vol. 13. Bloomsbury Publishing, 2010 at p. 65ff. see also Wallace, Mark I. "Karl Barth's hermeneutic: a way beyond the impasse." *The journal of religion* 68.3 (1988): 396-410.

absolutes.[27] There is no such thing as a monolithic "Indian legal mentality", cultures are internally too fragmented, diverse and heterogeneous to allow such a reification.[28] This is particularly true for India. Above we saw some aspects of the complex interaction between the colonial reception of English common law, that left Hindu law as a parallel legal system. We can add to this complexity the mix also the economic and social differences between affluent urban elites and impoverished, rural communities, and also the diversity of religions – from Christian[29] and Islamic[30] minorities to the rich tapestry of Hinduism, that ranges from atheist philosophies[31] to polytheistic approaches[32] to monotheism.[33] In addition, we find several hundred linguistic groups[34] and their associated cultures.

The attempt to derive a concept of privacy and digital identity from a small selection of cultural narratives is therefore by no means to be understood to speak "authoritatively on behalf" of these communities. Rather, its tries to find concepts and ideas that are of more immediate intelligibility across communities, and in this way set free the heuristic, problem solving potential of law, while avoiding stereotyping or reifying "Indian culture" beyond what the empirical evidence suggests.

In addition to the "high philosophy" that is used to develop a culturally situated notion of legal protection of digital identity, there are numerous other, pan-Indian stories, folklore tales and narratives that can also be utilised first, to communicate these legal ideas to an Indian audience, and second, to shape and educate their understanding of the dangers, obligations and rights that come with an online identity and lives lived in cyberspace. As a result, these stories form a web that grounds our attempt to find a culturally situated right to identity that is communicated through shared stories and narratives.

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[27] For the privacy discourse, and a juxtaposition of "individualistic, western conceptions of privacy" vs possible communal conceptions, see On the alleged lack of privacy concerns in India, and a nuanced "relativistic" account, see Basu, Subhajit. "Policy-making, technology and privacy in India." *Indian JL & Tech.* 6 (2010): 65

[28] Burkhard Schafer 'Form Follows Function Fails - as a Sociological Foundation of Comparative Law' (1999) *Social Epistemology* Vol. 13 No 2 pp.113-128

[29] Robert Eric Frykenberg, Christianity in India: From Beginnings to the Present.. Oxford History of the Christian Church. New York: Oxford University Press, 2008.

[30] Theodore P. Wright, Jr Muslim Legislators in India: Profile of a Minority Élite The Journal of Asian Studies Vol. 23, No. 2 (Feb., 1964), pp. 253-267

[31] Sen Gupta, Anima. *The Evolution of the Sāṃkhya School of Thought*. Munshiram Manoharlal Publishers Pvt. Ltd.: New Delhi, 1986.

[32] Alain Danielou, The Gods of India: Hindu Polytheism. Dehli, Inner Traditions 1985

[33] Matchett (2000). *Krsna, Lord or Avatara? the relationship between Krsna and Visnu: in the context of the Avatara myth as presented by the Harivamsa, the Visnupurana and the Bhagavatapurana*. Surrey: Routledge

[34] Andrew Simpson (2007). *Language and national identity in Asia*. Oxford University Press.

We can here but briefly give three examples of the "common narrative capital" of Indian culture that are particularly pertinent for situating online privacy rights.[35]

2.1: Privacy enhancing technologies in the presence of the Gods

In one of her works on the importance of gardens and their connection to privacy, Tinnefeld references the story of the Garden of Eden, the foundational Christian saga (in the Barthian sense). From a privacy perspective, this however is a highly ambiguous account. Before the Fall, the Garden of Eden, for all its pleasures, was an example of total surveillance – inevitable with an omniscient and omnipresent deity. Is there a need to be worried about such unlimited control? Maybe not, as God is not just omniscient and omnipresent, but also omnibenevolent, so we can trust Him not to abuse what he knows. But is this line of argument not akin to saying that he who has nothing to fear has nothing to hide? Hiding is of course the first thing Adam and Eve did– their nakedness, through the fig leave, and also themselves to escape punishment:

> *Then the eyes of both of them were opened, and they realized they were naked; so they sewed fig leaves together and made coverings for themselves.*
>
> *Then the man and his wife heard the sound of the Lord God as he was walking in the garden in the cool of the day, and they hid from the Lord God among the trees of the garden.*

This, of course, was inevitably futile, and their punishment was severe. The first attempt by humans to develop privacy enhancing technology (biodegradable and locally sourced!) ended in disaster, not just for them, but also for their descendants, and their descendant's descendants. In India too, we find a saga about privacy enhancing technologies in the context of a creation saga, but here the end is very different.

One day the Goddess Parvathi was getting ready for her bath and needed someone to guard her chamber, having experienced unwanted intrusion by her husband and some of the other Gods before.[36] Together with two female friends, Jaya and Vijaya, they scraped the sandalwood

[35] For a very comprehensive account, see Kirin Narayan, Storytellers, Saints and Scoundrels: Folk Narrative in Hindu Religious Teaching, University of Pennsylvania Press 1989

[36] There are several accounts of the birth of Ganesha, the one used here is a synthesis of *Shiva Purana* IV. 17.47-57 and *Matsya Purana* 154.547.

paste from her body, and from this she created a beautiful young boy and gave him life. He became her trusted guardian of her chamber against *all* incomers

Now it so happened that her husband, Lord Shiva, first among the Gods, returned home. There he now found a stranger standing guard at the entrance to his wife's chamber and blocking his entry. He asked, "Who are you and why are you blocking my path?" The boy replied "No one enters my mother's chamber." Shiva sends his servants, powerful beings in themselves, to remove this obstinate obstacle, only to see them defeated by the skilful use of the boy's weapon, and many of them destroyed. Shiva got increasingly angry, sending more and more of his fearsome servants against the child, and now also some of the other male Gods. But the boy did not move and stood his ground. Angry and not in the least amused at being disobeyed, Lord Shiva had to use all the magic weapons at his disposal, all his skills and all his cunning to overcome the guardian of his wife's chambers. But eventually, he prevails by brute force, and in his anger, he cuts off the boy's head.

When Parvati heard what had happened to her protector, she became enraged. So enraged did she become that she decided to destroy all of creation in a gigantic flood. The very future of all that is was in the balance, as her wraths not only overpowered the other deities, but threatened to unravel creation itself. Lord Brahma himself pleaded with her to reconsider. Which she did, eventually, but not unconditionally: first, her husband had to bring her guardian back to life, and second, her creation was to be given prominence over all other gods in prayer.

Shiva had little choice but to agree to Parvati's conditions, as her destructive power matches his own. But what to do with the mutilated body that was missing its head? He ordered his followers to bring the head of the first creature that they would find. When they returned, they brought with them the head of a powerful elephant. Connecting the head to the body, Lord Braham himself breathed new life into him. From then on he was known as Ganesha, and in accord with the agreement given the status as the foremost among the Gods in prayer.

This story can be seen as a powerful counter-narrative to the male-dominated account of the private sphere in the law that we saw above. Here, respect for privacy even protects against one's own husband – and even if he happens to be the foremost of the Gods. Transgressing boundaries and overcoming privacy enhancing technologies – even for someone who has in principle a right to access to a space – results in severe and very public punishment. While the

domestic conflict is not technically resolved through trial, the invocation of Lord Brahma and his intercession as a third party does involve an element of official arbitration through an independent authority. Privacy, we learn, is a value worth protecting with one's life if necessary, and those who overstep the boundaries others are setting face repercussions. Just as with the Genesis account of the Garden of Eden, it is also a creation saga – but one where Parvati takes a creative role that is in marked opposition to the common view of woman as passive receptacle for the male seed.[37]

2.2 of jackals and other miscreants

The second story I want to tell is less obviously about privacy. It is a story about deception, identity and how it can be assured. The connection to our topic is however strong. It is in the context of digital identity management systems, most notably Aadhaar, that Indian law developed its most current and strongest privacy regime.[38] The Aadhaar system is a digital identity management system that uses a 12-digit unique identity number based on their biometric and demographic data. With over 1.3 billion users, Aadhaar is the world's largest biometric ID system. Biometric information can be in the form of fingerprints, Iris scans and, at least in the near future, facial recognition technology.[39]

To administer the system, a statutory authority, the Unique Identification Authority of India (UIDAI), was established, and in 2016, in response to critical court decisions, the Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016 was enacted to provide legal foundations. Aadhaar is used to deliver social benefits and health programs, identifying citizens entitled to support, even though it is not a national ID document. It has also been used for more straightforward surveillance purposes, e.g. to police workplace attendance by civil servants.

[37] Vanita, Ruth, and Kumkum Roy. "Shiva Purana: The Birth of Ganesha" in *Same-sex love in India*. Palgrave Macmillan, New York, 2000. 81-84.
[38] On Aadhar see e.g. Chaudhuri, Bidisha, and Lion König. "The Aadhaar scheme: a cornerstone of a new citizenship regime in India?" *Contemporary South Asia* 26.2 (2018): 127-142. Madon, Shirin, C. R. Ranjini, and R. K. Anantha Krishnan. "Aadhaar and social assistance programming: local bureaucracies as critical intermediary." *Information Technology for Development* (2022): 1-16;
[39] https://www.ndtv.com/business/aadhaar-authentication-via-face-recognition-from-july-how-it-will-work-1800194

The system was controversial on privacy ground very much since its inception.[40] Legal challenges against it resulted in the most explicit recognition of a constitutional right to privacy in India yet, even though the core of Aadhar survived these challenges. In 2013, and before the enabling legislation had been enacted, the Supreme Court issued an interim order that enjoined the government to not deny a service merely because a resident was not in possession of an Aadhaar number, affirming its voluntary nature.

In 2017 the Indian Supreme Court delivered the landmark decision of Puttaswamy v. Union, which finally established the right to privacy as a constitutional right.[41] In 2018, the Supreme court delivered its long expected verdict against a number of specific challenges against Aadhaar and its de-facto mandatory use for several private sector initiatives. In its judgement, the court upheld the Aadhaar legislation in principle, but stipulated that the Aadhaar card must not be required even by private sector entities for opening bank accounts, getting a mobile number, or being admitted to a school, and also ruled some sections as unconstitutional on privacy grounds[42].

The story of the blue jackal, one of the most popular children fables in India, will allow us to contextualise some of the questions surrounding identity, change of identity and privacy in systems such as Aadhaar. We will then look at the fable through the lens of different digital identity architectures, before drawing some comparisons with the GDPR, especially its "right to be forgotten": should this right also be understood as a right to radically re-invent oneself, and leave one's (data) past behind?

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[40] See e.g. Chaudhuri, Bidisha. "Distant, opaque and seamful: seeing the state through the workings of Aadhaar in India." *Information Technology for Development* 27.1 (2021): 37-49; Masiero, Silvia, and Viktor Arvidsson. "Degenerative outcomes of digital identity platforms for development." *Information Systems Journal* 31.6 (2021): 903-928; Gopichandran, Vijayaprasad, et al. "Ethical challenges of digital health technologies: Aadhaar, India." *Bulletin of the World Health Organization* 98.4 (2020): 277; Tyagi, Amit Kumar, G. Rekha, and N. Sreenath. "Is your privacy safe with Aadhaar?: an open discussion." *2018 Fifth International Conference on Parallel, Distributed and Grid Computing (PDGC)*. IEEE, 2018.

[41] https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/

[42] https://www.bqprime.com/aadhaar/aadhaar-a-quick-summary-of-the-supreme-court-majority-order see Anand, Nishant. "New principles for governing Aadhaar: Improving access and inclusion, privacy, security, and identity management." *Journal of Science Policy & Governance* 18.01 (2021): 1-14.
Singh, Pawan. "Aadhaar and data privacy: biometric identification and anxieties of recognition in India." *Information, Communication & Society* 24.7 (2021): 978-993.

The indigo jackal:

This tale is a version of the story of the blue jackal taken from the Pūrnabhadra recension of the *Pancatantra*.[43]

A jackal named Ćandarava lived in a cave in the forest. One day, hunger drove him into a nearby city. While he was foraging for food in the bins, some mongrel dogs spotted him, and then viciously attacked him, the foreign interloper. Petrified, Ćandarava fled as far as his legs could carry him in search of a place of safety. He jumped through the nearest window and fell into a vat of indigo dye. When his pursuers gave up the chase, he exited the barrel: but lo and behold, he was now in a brilliant indigo colour, from snout to tail.

The other animals, on seeing such a strangely coloured animal, were taken aback: They had never seen a creature like him before. They wondered who he was and where he had come from, recalling an ancient saying:

> *When you do not know someone's strength,*
> *Or his lineage or conduct,*
> *It is not wise to trust him –*
> *And that is in your best interests.*

When Ćandarava realised that the other animals were distrustful of him, he called upon them: "My dear friends, be not scared of me, or run away from me in terror. The sovereign gods have anointed me as your King- to rule over you. Come to me and I will protect you."

Hearing this proclamation, the forest creatures big and small – the lions, tigers, monkeys, elephant, deer, leopards, hares and all the others came forth and paid their respects to their new King. He then appointed his cabinet- the lion as his chief minister, the tiger as his chamberlain. The leopard was given control over the royal beetle casket; the elephant was made the royal doorkeeper while the monkey was made the bearer of the royal umbrella. However, all the jackals were banished from the kingdom.

[43] See Visnu Sarma, The Pancatantra, Translated by C Rajan, Penguin Classics (1993)

All was well for a while. One day though, while Ćandarava was holding court, he heard some jackals howling. Feeling an irresistible urge to respond to the call of his pack, Ćandarava howled back on the top of his voice. But you cannot imagine how aghast, appalled and antagonised his "loyal" courtiers, ministers and hangers-on in the court were when they heard the howl. As Ćandarava's true identity became apparent, they recognised that they had bowed their legs to an inferior, an outcast and an imposter. And before you can say "Tiger, Tiger, Burning Bright" Ćandarava's chamberlain broke his neck with his paw and ripped open his jugular with his teeth.

The Panchatantra is a collection of ancient animal stories built on political strategies and statecraft. It plays a very important part in Indian literature and philosophy and was said to rank only second to the Bible in world circulation.[44] According to Hertel, as early as 1914, there were over 200 versions in fifty languages.[45] It has had a profound influence on world literature[46] and has been subject to work and re-work, revision, expansion, abstraction, conversion into prose, verse, translation and re-translation.[47]

The authorship of the Panchatantra is often attributed to Visnu Sarma, a renowned teacher from Mahilaropya.[48] The most common, but possibly itself mystical, story has Visnu Sarma appointed by king Amara Sakti to instruct his three young sons, and awaken their judgement and learning. A number of teachers had tried to educate the princes and had failed miserably. Sarma came up with the method of using real life experiences set in stories that would encourage the thought process through human and animal role plays. For our purpose this reinforces the point that these fables and stories are not just an entertaining collection of tales; it had a purpose and was meant to be instructive and educational, and giving normative advice on "how to act properly".[49]

[44] Winternitz, Moritz, Die indische Erzählungskultur, DLZ (1910) 2693-2702
[45] Hertel, Johannes. "Das Pañcatantra, seine Geschichte und seine Verbreitung: Gekrönte Preisschrift." (1914) Berlin, Teubner
[46] See Macdonell, Arthur Anthony. *India's past: a survey of her literatures, religions, languages and antiquities*. Asian Educational Services, 1994.
[47] Edgerton, Franklin, ed. The Panchatantra reconstructed: an attempt to establish the lost original Sanskrit text of the most famous of Indian story-collections on the basis of the principal extant versions. Vol. 2. American oriental society, 1924.
[48] See Sarma, Visnu, and Visnu Sarma. *The Pancatantra*. Penguin UK, 2006.
[49] Naithani, Sadhana. "The teacher and the taught: structures and meaning in the Arabian Nights and the Panchatantra." *Marvels & Tales* 18.2 (2004): 272-285.

We can now see how the tale of the indigo jackal could be used in an Indian context to make digital ID systems and privacy laws intelligible. Like Ćandarava, people visit varieties of (virtual) “worlds” to satisfy their needs conduct ecommerce transactions on the net, socialise, entertain themselves, seek health and other information and communicate with loved ones. If a need is not fulfilled in one virtual world, domain, chat room, or an email provider, users seek out another that best satisfies their needs. In the real-life context, people who are not happy with the money they earn, change jobs or move home in search of employment to another country.

But borders are protected by customs and immigration, and cities are patrolled by police to protect citizens and residents, and maintain law and order. The mongrels ensure that only “approved identities” enter the city – in the online world, their role is played by digital identity management companies, websites, login screens, ISP’s, Universities, employers, government. All these engage in some form of gate keeping and control. Ćandarava was lacking the appropriate credentials, and was hence chased away.

Ćandarava, in his attempt to flee the mongrels, fell into a vat of indigo dye and was coloured indigo all over. This is symbolic of a change in identity, for in Ćandarava’s case his colour represented a very important aspect of his self and who he was. The reaction of the animals to this change is interesting: one the one hand, they cannot trust him – as the quote above indicates, trusting someone requires to “know who they are”, their lineage and heritage. In an online world, this corresponds to the trust rating associated with e.g. a digital identity as an ebay seller and the track record they build over time.[50] Losing your identity also means to lose this type of “accumulated trust”, your data-past that allows you to be trusted in the present. In GDPR terms, had there been “data portability”, Ćandarava may have been able to gain the trust of the other animals sooner – provided that he is still able to disclose only some, but not all of his old self.

Ćandarava first saw definite positive benefit of his changed identity (his indigo colour) when he escaped from a potentially fatal attack by the mongrels. This corresponds to the liberating potential of online identities, and the loose connection they may have with offline reality –

[50] Patton, Mary Anne, and Audun Jøsang. "Technologies for trust in electronic commerce." *Electronic Commerce Research* 4.1 (2004): 9-21.

freeing yourself from the accidents of birth and the constraints it can bring with it. This issue has particular salience in the Indian context, where the politics of caste and caste membership left an enduring legacy even after their abolition in post-colonial India.[51] The British administrators, seeing it as a convenient mode of divide and control, had been all too willing to integrate the system into their administrative apparatus. Public opposition to the Aardhaar system stems in good parts from the experience with the use of bureaucratic control that connected cast membership with modern forms of governmentality. The fear that it allows to identify family relations, and with that inherited caste membership, is particularly strong amongst those who try to shred their connection to this past identity.[52]

Let us now explore the nuances of Ćandarava's new identity in depth. Using the classificatory system of Windley[53], the fact that Ćandarava was a jackal represented a trait (feature of the subject; however Windley perceived a trait as being inherent). So therefore, Ćandarava's new colour could be an attribute**.** For Windley that attributes are, "things like medical history, past purchasing behaviour, bank balance, credit rating, dress size, age, and so on."[54] Ćandarava's proclamation that he was sent by God coupled with his uniqueness was his credential**.**[55] One might suggest that this credential was flawed, but it was this credential in the absence of any other proof that Ćandarava used to become king of the forest.

Types of identity management

We can now examine how the three types of identity management - user-centric, domain centric or federated - are present in our tale, again with the ultimate goal to use fables like this to make design choices and the privacy rights that they support intelligible to their users. User-centric systems like OpenId and CardSpace are those that permit the user to decide what identity attributes he/she should reveal to the content provider. In a domain centric system, the user

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[51] Deshpande, Ashwini. "Overlapping identities under liberalization: Gender and caste in India." *Economic Development and Cultural Change* 55.4 (2007): 735-760.

[52] Arora, Payal. "Politics of Algorithms, Indian Citizenship, and the Colonial Legacy." *Global Digital Cultures: Perspectives from South Asia* (2019): 37-52; Sarkar, Sudipa, Bhaskar Chakravorty, and Clare Lyonette. *Social Identity and Aspiration-Double Jeopardy or Intersectionality? Evidence from Rural India*. No. 724. GLO Discussion Paper, 2020.

[53] Windley, Phillip J. "Multisource digital identity." *IEEE Internet Computing* 23.5 (2019): 8-17.

[54] Windley, Phillip J. *Digital Identity: Unmasking identity management architecture (IMA)*. " O'Reilly Media, Inc.", 2005.

[55] Windley defines credential as "proof that a subject has a right to assert a particular identity." Windley, Phillip J., et al. "Using reputation to augment explicit authorization." *Proceedings of the 2007 ACM workshop on Digital identity management*. 2007.

approves domain specific identity attributes. In a federated system, the user approves the transfer of identity attributes already released to other federation members to be transferred between them.[56]

In our illustrative tale, Ćandarava chose and decided what attribute of his identity he was going to reveal to the animals of the forest. This is typical of user centric system. The feature in question, his colour, can be seen as analogous to a biometric identifier – a patterns that uniquely identified him as different from all other animals.

In an attempt to maintain and manage his new identity to his advantage, Ćandarava had all the jackals of the forest banished. The jackals, knowing him from his past, were the only ones who had the capacity to recognise him for what he was (that is a jackal not unlike them). This he couldn't let happen. Individuals often do the same. On social networking sites, they do this by blocking and limited access to individuals they do not like or want accessing their profiles. Some consciously choose not to belong to communities online they are normally associated with offline.

The identity, security and privacy relationship are central for our discussion. So what can we infer from Ćandarava's tale for this relationship? The identity element is represented by Ćandarava, and his being a jackal. That was his birth identity. Circumstances forced him to turn indigo in colour. He then went on to become the king of the forest. These were all his identities (or attributes thereof, depending on context). Ćandarava needed privacy for his new identity, and achieved it by banishing the jackals – in data protection parlance, he exercised his right to be forgotten by effectively getting "de-indexed" – the other animals could now not any longer find the information that allowed his re-identification.

The story of the indigo jackal shows also an ambivalence in Indian culture towards multiple identities. The first part of the story reads as liberating – challenging the caste system and its rigidity, and accepting the jackal for who he, individually, is by losing the ability to simply classify him as one of a specific kind, with specific "access rights" and privileges. Very possibly, in the West this is how the story would have ended, a celebration of individualism

[56] These simplified definitions are taken from Liberty Alliance Project, Digital Identity Management A Critical Link to Service Success: A Public Network Perspective - 1/2007, A Telecompetition Group Market Study Report, January, 2007, p 12 http://www.projectliberty.org/liberty/resource_center/papers

undermining the caste system. But our story has a bad ending. The jackal was “maya”, deceptive, not true to his own self and therefore ultimately doomed. We find the same ambiguity to the legal protection of online pseudonymity. The present-day “jackal mongrels” don’t accept their banishment, that is the state reserves the right to pierce online pseudonyms, and the liberating abilities of change of online identity carry the opprobrium of deception.

In a European context, we find similar ambivalent attitudes, but with a different overall outcome, in the context of the GDPR. The right to be forgotten too has been deemed to be a vehicle for deception, crime and dishonesty.[57] Nonetheless, the appeal of the “self-made man” and the “unencumbered self” in individualistic societies provided a framework within which such a right is intelligible, where our *past* is essentially *our* past and therefore something we can also abandon. In communal societies like India where identity is more visibly tied to the totality of social and familial relations of a person, severing these ties to reinvent oneself is more problematic, and it may be here that we find the most substantial differences in the privacy conception between these cultures.

2.3 Of Gods and demons

In this final section, we will have a second look at the question of identity, deception and the right to appear under different attributed to different audiences. It will furnish us with sagas whose moral lessons are more positive and accommodating to multiple identities.

Avatars have special significance in Hinduism. Avatars in the context of Hinduism represent the most popular and potent form of identity that manifests itself in relation to the Gods. Avatar is a description for God taking human form (an incarnation). The most famous Avatar representations are those manifests by Lord Vishnu (the preserver of the Universe) in the form of the Dasavatars (ten avatars) - Sri Rama, Sri Krishna, Matsya the fish, Kurma the tortoise, Varaha the boar, Narasimha the lion man, Vamana the dwarf, Parashurama the Brahmin priest, Buddha and Kalki.

[57] https://cioj.org/right-to-be-forgotten-ruling-branded-a-criminals-charter/ ; Zittrain, Jonathan L. "The right to be forgotten ruling leaves nagging doubts." *Financial Times* (19. Sept 2014).

Gods do not simply assume the form of avatars. Godly Avatars have specific purpose (and reasons for existence). They appear in times of crisis. Vishnu (as Lord Krishna) says this to Arjuna in the Bhagwadgita: Many are my births, and I know them all…unborn and Lord of all creatures I assume this phenomena, and am born by the illusion of the spirit. Whenever there is lack of righteousness or wrong arises, then I emit myself." All the avatars of Lord Vishnu had such specific purposes – Matsya the fish (saves holy scriptures from the flood), Kurma (rendering stability to the world by preserving it balance), Varaha the boar (helping keep the earth afloat), Narasimha (to kill an evil demonic tyrant ruler), Parashuram (to deal with the tyranny of the Kshatriyas), Rama (idealise virtue and defeat evil king Ravana), Lord Buddha (to enlighten the world). Thus, avatars come into being for the protection of the righteous and innocent, destruction of the wicked, enlightenment and establishment of order.

These stories emphasise the positive role of multiple identities and shifting contexts. Similar function have common narratives of "guises".

An account from the Mahabharata can illustrate this idea: Arjuna, the brave Pandava prince, exiled in the jungle, went out to the Himalayas to worship Lord Shiva so that he could obtain the *Paasupataastram*, an infallible weapon. There, he indulged in severe penance. Lord Shiva assumed the guise of a hunter (*Kiraatamurthy*), appeared before him, picked a quarrel with him over a wild boar, and challenged him to a fight. The prince fought the hunter valiantly and to the best of his efforts. When Lord Shiva had stripped the Prince of his weapons and his ego, he revealed his true self and blessed the Prince with the *Paasupataastram.*

Here too we can see the ambiguous attitude towards disguise: it is in this story an acceptable means to an end, but the end is revealing a true identity, a true self. In our legal and technological analogy, this corresponds to the idea that identities must ultimately be traceable to a common source, legitimizing some restrictions on technological solutions to identity management.

Like the Gods, Demons have the capacity to adopt powerful and often lethal identity guises. This is brought home by the account of Golden Deer in the Ramayana. The demon king Ravana covets Sita, the wife of Sri Rama. He asks another demon Maricha for help. Maricha turns himself into a deer of dazzling beauty and begins to graze near Sita's cottage. Sita is enamoured by the deer's beauty and asks her husband Sri Rama to capture it for her. Sri Rama's brother

Lakhsmana also with them has misgivings about the identity of the deer. Despite this, Sri Rama on Sita's persuasion goes after the deer leaving her and Lakshmana alone in the cottage. The deer lures Sri Rama very deep into the forest. Sri Rama manages to rent the heart of the deer (or Maricha's) with his arrow. But Maricha disguises his voice to sound like Rama at that moment and calls for help from Sita and Lakshman. Sita sends Lakshman to help Sri Rama. And Ravana is able to take advantage of the situation and abduct Sita.

While the guising of the Gods is perceived as legitimate (lacking dishonesty), guising by the demons generally is illegitimate. The identities of the demons are problematic. They do not have socially acceptable identities, so they take on forms of valid and accepted identities of others, resulting in what can only be termed identity fraud or in Indian legal terms (and per the IPC s 416) cheating by impersonation.

We can try a final contrast with western lore. One of the foundation myth of Britain centres around a story of deception and identity theft very similar to the one told about Ravana. King Uther Pendragon, legendary king of Britain in the 6th century, was the father of King Arthur. Uther is depicted as a rather ambiguous individual yet overall a strong king and a defender of his people, hero rather than villain of the story. According to Arthurian legend, Uther falls in love with the wife of his enemy Gorlois. Merlin, Uther's magician, magically disguises Uther to look like Gorlois. Disguised as Gorlois, Uther enters his enemy's castle and there sleeps with Lady Igraine. Arthur, "the once and future king", is the illegitimate child of this rape by deception.[58] Despite lacking redeeming or exculpating factors, neither he, nor Arthur, are described as tainted by these events, indicating again a high level of tolerance towards the "reinvented self"

3. In lieu of a conclusion

The aim of this paper was to explore the potential of pan-Indian sagas, fables and stories to get a more locally and contextually grounded perception of privacy outside the western world. It does not offer a grand theory, nor does it resolve the many ambiguities that shape the privacy discourse in India. Hopefully however, they showed a way to supplement Tinnefled's account

[58] At least in the eyes of modern law, see Kennedy, Chloë. "Criminalising deceptive sex: sex, identity and recognition." *Legal Studies* 41.1 (2021): 91-110.

of culturally grown free spaces through data narratives from outside the western tradition. Hopefully too, they showed both coon ground, and interesting divergence. It is difficult to speak clearly about the meaning of privacy, and it is twice as difficult to speak clearly about the meaning the concept may have in someone else's culture. "What can be said at all can be said clearly; and whereof one cannot speak thereof one must be silent." Hopefully, the stories speak clearly where I as author should remain silent.