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SUMMARY OF CONTENTS

# Theory of Privacy in a Cyber Age.

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This thesis examines the Japanese civil law protection of privacy in a Cyber age, by reference to Amitai Etzioni's sociological discussion (liberal communitarianism) in the USA. In recent years, digitization of the physical world's information is progressing by a combination of the Internet of Things (IoT), Big Data Analytics, Artificial Intelligence (AI). We are already living in "a cyber age" not in a paper age, so we need to discuss how to protect our privacy in a cyber age.

The questions are as follows: (1) we should impose what liability to companies in the information technology industry, (2) we should decide how we will balance our privacy against the public interest.

The findings of this thesis are as follows.

(1) It is essential that we prohibit excessive cybernation (processing, analyzing, sharing) of all information except insensitive personal information, and ban the use of insensitive information to divine sensitive information. we should also consider the degree to which various accountability mechanisms (e.g. firewalls, encryption, audit trails) impose limitation on cybernation. The more extensive and effective accountability measures are, the less cybernation occurs, and the better privacy is protected. And because of the "Black Box" problem of AI, the law in the cyber age requires new instruments much more than new laws itself. To enforce above regulations,

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we should consider mandating the use of AI to audit and monitor AI surveillance programs.

For the better civil law protection of privacy in a cyber society, we should focus on the risks to privacy posed by the collection of high volumes of information of high sensitivity, paying special attention to the extent to which the information is cybernated. We should also verify the usefulness of using AI-assisted oversight as accountability to curb AI-enhanced cybernation.

(2) Privacy cannot be extended to the point where it undermines the common good (e.g. public safety, public health, and equality); conversely, duties set to maintain social order cannot be expanded to the point where they destroy privacy. Then, we should discuss the sensitivity of information. The concept that some kinds of information are more sensitive than others has been often articulated by privacy scholars. In each society, the legislatures and courts operationalize these differences in the normative standing of different kinds of information. So, the measurements of sensitivity should reflect the values of the society, in particular, "community" in question.

Japanese civil code article 709 provides the general rule of tort liability. Under this provision, The Japanese Supreme Court held that the standard of liability for privacy violation that (a) the wrongdoer infringed any right or legally protected interest of others [infringement requirement] (b) the defendant acted unlawfully[unlawfulness requirement], intentionally, or negligently. We should examine the sensitivity of information in the infringement requirement, balance the individual interests and the contributions to the common good in the unlawfulness requirement. This is basic policy of this problem based on which the interpretation and the operation shall be made. The interests of all parties (individuals, communities, nation, and global society) must be specifically balanced.