

Always Known but Rarely Loved: A Christian Ethical Assessment of Facial Recognition Technology

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In January 2020, Kashmir Hill of *The New York Times* broke a story about a little-known startup company, Clearview AI, that developed a controversial facial recognition application for policing and government surveillance.¹ The simple application allows users, primarily law enforcement, to upload a subject's photo to the Clearview AI database, and then receive a name or identity as well as all known public photos of that person. These photos come from a host of locations across the internet including photos that the subject may not know exist such as pictures where they were in the background of a stranger's photo or someone took their photo without their knowledge or consent. This application became a source of national inquiry and intrigue because Clearview AI has, at the time of this writing, partnered with over 2200 local law enforcement and police departments across the United States and initially had plans to expand into commercial opportunities.² Law enforcement officers found the technology to be extremely useful in identifying suspects and breaking open cold cases, but also found the technology to be incredibly invasive into the personal privacy of the general public who likely had no idea that this application existed before the Hill story or that it has already been deployed in departments and agencies in their local communities.³

Throughout the world, highly sophisticated surveillance systems like facial recognition are being utilized to track, identify, and direct people in all parts of the world.⁴ Recent global events, such as the 2020 outbreak of COVID-19⁵ and the continued systemic persecution of religious minorities in nations like China,⁶ have challenged how the world thinks about government led technology surveillance. Especially in light of the sheer bravado of companies like Clearview AI to push the ethical bounds of data collection and usage, questions about the ethical use of these technologies for the public good abound in our digital age. These ethical issues include, but are not limited to, personal privacy, bias, discrimination, religious freedom, and the nature of security. For all of the good these

1 Kashmir Hill, "The Secretive Company That Might End Privacy as We Know It," *The New York Times*, January 18, 2020, <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>.

2 Ryan Mac, Caroline Haskins, and Logan McDonald, "Clearview AI Says It Will No Longer Provide Facial Recognition To Private Companies," BuzzFeed News, May 7, 2020, <https://www.buzzfeednews.com/article/ryanmac/clearview-ai-no-facial-recognition-private-companies>. Further, Clearview AI has also canceled all contracts working within the State of Illinois, based on a Illinois biometric privacy statute which bans the use of this surveillance for commercial purposes.

3 After Hill's story exposed the company's application and use, Clearview AI founder Hoan Ton-That finally agreed to be interviewed by the *Times*. In the interview, Ton-That demonstrated how the technology works, where the photos to build such a system were collected, and how it can be incredibly beneficial in the hands of the government and local municipalities to identify and ultimately apprehend criminals, including child sex offenders who often were barely caught on camera footage but could be identified by the system and reported to appropriate authorities. See Kashmir Hill, "Unmasking a Company That Wants to Unmask Us All," *The New York Times*, January 20, 2020, sec. Reader Center, <https://www.nytimes.com/2020/01/20/reader-center/insider-clearview-ai.html>.

4 Eric Stoddart describes facial recognition technology as a "silent technology" that is often embedded into other forms of technology. He also calls it a "passive technology," meaning it requires little user interaction, and an "open-ended technology," in terms of its applicability in our society. This technology is also often proprietary, which helps guard against outside scrutiny and commercial competition. For further detail, see Eric Stoddart, *Theological Perspectives on a Surveillance Society: Watching and Being Watched* (Abingdon, England: Routledge, 2016), 96.

5 For more on Clearview AI's public intent to assist with contact tracing during the 2020 COVID-19 pandemic, see Jacob Ward and Chiara Sottile, "A Facial Recognition Company Wants to Help with Contact Tracing. A Senator Has Questions," *NBC News*, accessed May 9, 2020, <https://www.nbcnews.com/tech/security/facial-recognition-company-wants-help-contact-tracing-senator-has-questions-n1197291>.

6 For more on the systemic persecution of religious minorities by authoritarian regimes, see Jason Thacker, "Artificial Intelligence Favors the Powerful. But It Doesn't Have To.," *Christianity Today*, accessed April 21, 2020, <https://www.christianitytoday.com/ct/2019/april-web-only/artificial-intelligence-facial-recognition-muslims-china.html>.

systems often provide for society in terms of security and surveillance, how does one weigh the potential abuses and oppressive uses of this technology in light of the Christian moral tradition? And how does the Christian concept of human dignity inform the role of facial recognition surveillance for government use? Drawing on the concept of the image of God, this article argues that the Christian moral tradition provides a clear and compelling path forward for development and utilization of facial recognition tools that can be deployed in ways that honor God and love our neighbors, uphold personal privacy, and protect the innocent.

This article will examine the ethical implications of this controversial new technology, the foundation of personal privacy in both the secular and Christian moral traditions, the role of the face in Christian theology, and the proper place of these tools for governmental use through policing and surveillance in society in line with the Christian concept of human dignity grounded in the *imago Dei*.

ETHICAL IMPLICATIONS

Hoan Ton-That's, founder of Clearview AI, innovation in facial recognition technology, struck a nerve within the American community. Long gone were the sci-fi fantasies and Hollywood thriller plots that cast a vision of a completely digitized future with facial recognition integrated into every area of society. Clearview AI's new algorithm showed Americans (and the watching world) that this powerful technology could be developed with current computer science and data collection methods, marketed to government agencies such as police and federal agencies, and deployed in mass under the auspices of safety and security. For all of the benefits of this technology, there are major ethical implications that must be addressed by thoughtful citizens, especially Christians.

The New York Times highlighted the fact that the technology that Clearview AI created was not actually that revolutionary or even a massive breakthrough. Most major technology companies such as Google, Facebook, and Microsoft claimed that they have been able to create this exact tool for many years but did not because of the potential legal and ethical issues at stake. Hoan Ton-That chose to push ahead with this innovation despite these ethical and moral issues. He developed the tool to scrape all publicly available photos from major services such as Facebook, Twitter, and even popular financial apps like Venmo. Clearview AI decided to skirt the line of ethics and privacy by collecting these photos without consent or even knowledge of other companies or users in order to build out its algorithmic detection system. Surveillance expert and Harvard professor Shoshanna Zuboff writes about how this practice of pursuing innovation without clear moral guidance is nothing new. “[These] companies [insist] on their right to use facial-recognition systems to identify a ‘stranger on the street’ without first obtaining the individual’s consent.”⁷ She goes on to quote a technology lobbyist who told the press during the failed pursuit of US federal biometric guidance in 2015, “everyone has the right to take photographs in public...if someone wants to apply facial recognition, should they really need to get consent in advance?”⁸ Clearview AI's ethical problems were not just limited to the capture and use of photographs from across these various services without personal consent or company knowledge. The use of these tools for identification purposes brings about a host of ethical problems. With the invasiveness and promulgation of facial recognition surveillance systems in civic society, we are beginning to see how these tools may lead to extreme unintended consequences for certain populations in our society where these groups are disparaged based on the color of their skin, sex, or even supposed religious identification from outward appearances.

⁷ Shoshanna Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, 1st ed. (New York: PublicAffairs, 2019), 253.

⁸ *Ibid.*

Bias and Discrimination

Facial recognition systems are built on various pieces of image data which make up a personalized facial map. But, if there is any issue with the quality of data, the number of inputs, or even how the system is used as it continues to learn and grow in its accuracy, then the system may give false positives or return without any results.⁹ Any of these errors can lead to certain biases baked into the system.¹⁰ In December 2019, the National Institute of Standards and Technology released a landmark report demonstrating the inherent bias that these systems can exhibit even without malcontent or even knowledge of their creators.¹¹ The researchers evaluated 189 different algorithms from across the industry and found some disturbing trends. The team saw “higher rates of false positives for Asian and African American faces relative to images of Caucasians,” especially those of African American females. These false positives also extended to other native groups in the United States such as Native Americans, Alaskan Indians, and Pacific Islanders.

False positives in these systems might be innocuous, if being deployed in a photo labeling application on a smartphone device, but can lead to devastating effects, if deployed in security or public safety applications used by law enforcement and other government agencies. As Clearview AI made clear, there is a market for these tools and they will be developed with or without substantive thought into the ethical implications of bias and discrimination. These types of discrimination are also seen in terms of religious identification as well, especially when these tools are in the hands of authoritarian regimes bent on gaining and retaining power over their people.¹²

The Chinese Communist Party (CCP) has long been in favor of technological progress and innovation. Alongside the economic benefits of these innovations and tools, they also provide the CCP a level of control over the information shared, freedoms expressed, and dignity afforded to Chinese citizens. The CCP uses these powerful technologies like facial recognition to oppress their citizens and strip them of basic freedoms, such as religious liberty, economic mobility, the ability to gather and learn from dissenting voices, and even the freedom to move about without being tracked. The Chinese government proudly and publicly promotes their powerful tools for the watching world. The BBC reported in 2017 how China has deployed one of the most complex and powerful facial recognition systems in the world with thousands of cameras, including mobile units used by police, in the city of Guiyang.¹³ The CCP touted how powerful the system has become and how it can be used to protect its people and provide security against violent crime, but it is clear that this security only applies to certain citizens in China.

It has been long documented that China has systematically used facial recognition tools to oppress entire people groups, such as the Uyghur Muslims, tracking millions of them down and

9 As Shannon Vallor points out, these algorithmic systems have the same blind spots, flawed assumptions, and biases as the humans who generated and labeled the data they are built upon. She goes on to say that these biases are “all too easily disguised and reinforced by the power of data anonymization and aggregation.” See Shannon Vallor, *Technology and the Virtues: A Philosophical Guide to a Future Worth Wanting* (New York: Oxford University Press, 2016), 193.

10 For more on algorithmic and biometric bias, see Kate M. Ott, *Christian Ethics for a Digital Society* (London: Rowman & Littlefield, 2019), 30-32.

11 Patrick Grother, Mei Ngan, and Kayee Hanaoka, “Face Recognition Vendor Test Part 3: Demographic Effects” (Gaithersburg, MD: National Institute of Standards and Technology, December 2019), <https://doi.org/10.6028/NIST.IR.8280>.

12 Daniel Doneson argues that one of the fundamental problems with technology is humanity’s “boastful pride” and seeking of power over our broken world that leads to many of the issues that we experience with technology in our societies. This argument aligns with the Genesis account of the Fall and rebellion against God. Doneson also argues for the role of liberal arts and the humanities to solve the modern problems of technology, because neither science or technology has the basis for dealing with the ethical implications of technology. See Daniel Doneson, “On Technology and Humanity: A Bibliographic Essay,” *The Hedgehog Review: Critical Reflections on Contemporary Culture* 13, no. 2 (Summer 2011), 47-52. For more on the lust for power and control over others from a Christian perspective, see D. A. Carson, *Christ and Culture Revisited* (Grand Rapids: Eerdmans, 2008), 141.

13 “China: ‘The World’s Biggest Camera Surveillance Network,’” *BBC News*, accessed May 4, 2020, <https://www.youtube.com/watch?v=pNf4-d6fDoY>.

forcing them into concentration like camps in the western Xinjiang region.¹⁴ The Chinese Communist party is able to retain so much power by utilizing camera technologies and facial recognition tools from CCP-backed companies like Hikvision, who originally marketed their facial recognition systems with advertisements based on racial and religious profiling, highlighting the difference between a Han and a Uighur Muslim.¹⁵ It has been documented widely that Uighurs have been forcibly captured, sent to internment camps in the western Xinjiang region of China, and forced under pressure to renounce their faith while swearing allegiance to the Chinese Communist Party.¹⁶ While bias and discrimination are serious problems with the widespread adoption of current facial recognition tools, the fundamental issue at stake with these tools is the erosion of personal privacy and the blurring of the public/private divide.

Erosion of Privacy

As facial recognition technology continues to be adopted throughout the world in airports, public spaces, and even now our front doors through the mass adoption of smart camera and doorbell technology, there is a deep sense among many that we have entered a completely different stage of human history where personal privacy may be a thing of the past.¹⁷ We now know that photos may be scraped from various places online or even taken in public without our knowledge or consent and then used to build massive surveillance systems. And with the emerging ubiquity of facial recognition, the United States still does not have a modern digital privacy law at the federal level, much less any federal regulations on the use of facial recognition tools.¹⁸ These systems often go unregulated because governments have a difficult time keeping legislation up to date with the fast pace of technological development. With the lack of regulation and the ability of these tools to centralize power in the hands of the few, many throughout the world feel a deep urgency about this technology and a growing fear that our dignity as humans may be at stake. If these tools end up in the hands of bad actors or institutions where there is already considerable mistrust, such as local or federal governments, the fear might overshadow the benefits of facial recognition.

Brad Smith, president of Microsoft, points out some of these fears by observing “a government might use facial recognition to identify every individual attending a peaceful rally, following up in ways that could chill free expression and the ability to assemble.”¹⁹ He goes on to say, “the police might rely excessively on this tool to identify a suspect without appreciating that facial recognition, like every technology, doesn’t always work perfectly.”²⁰ This is the main factor of fear for many throughout the United States and abroad: the fear that this technology will be misused, abused, or even relied upon to the point where we forget that these tools are made by human beings with our own inherent known and unknown bias, discrimination, or brokenness.²¹ The power and trust

14 Roland Hughes, “China’s Muslim ‘crackdown’ Explained,” *BBC News*, November 8, 2018, sec. China, <https://www.bbc.com/news/world-asia-china-45474279>.

15 “Hikvision Markets Uyghur Ethnicity Analytics, Now Covers Up,” IPVM, November 11, 2019, <https://ipvm.com/reports/hikvision-uyghur>.

16 Vicky Xiuzhong Xu, Danielle Cave, James Leibold, Kelsey Munro, and Nathan Ruser, “Uyghurs for Sale,” accessed May 4, 2020, <https://www.aspi.org.au/report/uyghurs-sale>.

17 For more on this radical shift in privacy, see Firmin DeBrabander, *Life After Privacy Reclaiming Democracy in a Surveillance Society* (Cambridge, England: Cambridge University Press, 2020).

18 Zuboff, *The Age of Surveillance Capitalism*. 251.

19 Brad Smith and Carol Ann Browne, *Tools and Weapons: The Promise and the Peril of the Digital Age* (New York: Penguin, 2019), 213.

20 Ibid. 214.

21 This is often because of the trust factor that we naturally establish with technology. If the tools correctly identify or work without many errors time and time again, it is easy for human reviewers or users to let their guard down and not continually check the results to make sure they are accurate each time. This trust factor, along with the powerful nature of these tools, can lead to dangerous outcomes such as a government agency or police department tracking the wrong individual or, even worse, knowingly tracking people without their knowledge or consent who are actually innocent. Facial recognition used without a moral compass or safety guards could lead to “mass surveillance on an unprecedented scale,” according to Smith and Brown, *Tools and Weapons*, 227.

these tools can command show that they cannot be deployed in the manner of other technologies of the past, because the cost to personal privacy may just be too high for many to allow. But as many people question the role of facial recognition technology in public life, and as our dependence on these emerging technologies continues to grow, we must evaluate the foundations of our sense of personal privacy and why they matter.

FOUNDATION OF PRIVACY

We live in a society of irony. The irony flows from our growing insistence on technological convenience, where we become frustrated with the lack of connectivity between our tools or even clamor for more personalized experiences with our technologies and gadgets. In relation to facial recognition, we clamor to have the latest Apple iPhone with Face ID, which uses a form of facial recognition, as we enjoy the convenience of using our faces as the new age password, thereby opening up some of the most personal and intimate details of our lives. Many airports throughout the United States are beginning to implement facial recognition tools from companies like CLEAR that market their products as “you are your best ID.”²² And, at the same time, there is an intense societal debate going on over the nature and extent of personal privacy. From the European Union’s GDPR in 2016 to the formal implementation of the landmark California Consumer Privacy Act (CCPA) in 2020, privacy legislation is being debated all around us and there are new calls to pass more state level legislation in hopes of forcing the United States Congress to proceed with a federal privacy act that would either come alongside state measures or possibly overrule them all together.

Much of the conversation about modern privacy rights, therefore, is based on some notion of personal property rights, which flows into the notion of a private vs. public divide in an individual’s life. As I will argue, property rights and this notion of privacy is often grounded in the concept of personal autonomy, rather than a concept of human dignity or human exceptionalism, because many modern secularists and politicians reject the idea of human dignity based on its religious undertones and historical grounding. Attempting to ground their concepts of privacy in personal autonomy leads to an entirely new set of difficulties in regulating technologies such as facial recognition or the use of artificial intelligence.²³ First, we will examine the concept of personal autonomy and how this concept has influenced the debates over personal privacy. Then, we will address the Christian moral tradition based in human dignity as the true foundation for personal privacy.

Personal Autonomy

Personal autonomy is a very popular understanding of our rights today. From the highs of the sexual revolution to the libertarian ideals of the least amount of government possible, autonomy has become the central tenet of the modern political project. As we will see, autonomy is often seen through a penumbra of the Bill of Rights, which was influenced by John Locke’s political philosophy as well as the Kantian understanding of individual freedom.²⁴ Many of the founders of the

22 CLEAR primarily focuses on the convenience factor for customers. Their facial recognition technology is currently being used in airports and other venues, where personal identification is required. As of this writing, they highlight over 65 airports and venues using this technology on their website. See Clearme.com.

23 See Francis Beckwith, *Taking Rites Seriously: Law, Politics, and the Reasonableness of Faith* (New York: Cambridge University Press, 2015), 81-104. for a comprehensive argument of the validity of the human dignity approach to ethical application. In this section, he addresses a few major arguments against a human dignity approach. First, the concept of dignity is seen as too subjective and based on social or religious norms, making it an unstable grounding. Second, dignity as a concept is seen as unnecessary based on the validity of personal autonomy to address the major issues of the day. Beckwith exposes the flaws in this point by showing how personal autonomy presupposes dignity and how dignity can have greater explanatory power in accounting for certain moral wrongs (98). Beckwith explains that, just because someone has the freedom to make a choice, does not insure that the choice will be a moral one. (99)

24 See John Locke, “Two Treatises on Government,” Online Library of Liberty, 1689, <https://oll.libertyfund.org/pages/john-locke-two-treatises-1689>. and Immanuel Kant, “What Is Enlightenment,” trans. Mary C. Smith, accessed May 9, 2020, <http://www.columbia.edu/acis/ets/CCREAD/etscc/kant.html>.

United States derived much of their understanding of the natural rights to life, liberty, and property from the democratic political philosophies of their day.²⁵ These individual rights are now seen as cut off from concepts of human dignity as seen in the Christian moral tradition based in the image of God.²⁶ These personal rights helped set the foundation for most major privacy debates, because the modern definitions of personal privacy are grounded in the sense of personal freedom and autonomy, where no government should be able to override certain inalienable rights.²⁷

Nowhere is this sense of personal autonomy better seen than in the 1965 United States Supreme Court decision of *Griswold v. Connecticut*. Writing for the majority, Justice William Douglas famously found an “implied constitutional right to privacy” in the penumbra of the Bill of Rights.²⁸ The Bill of Rights enumerated, by design, a process, intended by the Founders, for recognizing certain pre-political rights which run contrary to current debates over privacy. At the time, this right to privacy extended specifically to the right of privacy for married couples to obtain contraceptives, but this right to privacy soon became the foundation for the Privacy Act of 1974, in which a certain level of privacy was enshrined into law by Congress. As Sarah E. Igo describes, “in one fell swoop, [the Privacy Act of 1974] disallowed secret data-gathering systems, prevented information collected for one use to be used for another, and enabled individuals to know of and correct materials in their records.”²⁹

This new privacy act, along with the “implied right to privacy” based in the “penumbra of the Bill of Rights,” raised the alarm for many Americans about how their privacy was being chipped away in the Big Brother or surveillance state. President Gerald Ford, referencing the Privacy Act of 1974, spoke to the government’s role in this surveillance society at Stanford Law School, recommending, “we must protect every individual from excessive and unnecessary intrusions by a ‘Big Brother’ bureaucracy.” He went on to describe the citizens as a “face-less set of digits in a monstrous network of computers.” Little did President Ford know that the invasion of personal privacy in our “Big Brother” digital society would quickly extend to the face as a source of data to be collected, analyzed, and used in the name of public security.

This basis of privacy informed other Supreme Court decisions such as *Roe v. Wade* and later *Lawrence v. Texas*, where the court enshrined the right to privacy as an inherent part of the right to freedom of expression and complete moral autonomy devoid of any reference to religion or faith lived under God. In delivering the *Lawrence* opinion, Justice Anthony Kennedy stated, “Liberty protects the person from unwarranted government intrusions into a dwelling or other private places.”³⁰ He went further to argue that liberty presumes that the state should not have a dominant presence in the homes of Americans, as well as an “autonomy of self that includes freedom of

25 George F. Will, *The Conservative Sensibility*, 1st ed. (New York: Hachette, 2019), 171.

26 See Michael Zuckert, “Human Dignity and the Basis of Justice: Freedom, Rights, and the Self,” *The Hedgehog Review: Critical Reflections on Contemporary Culture* 9, no. 3 (Fall 2007) for a further exploration into the relationship of the concepts of human dignity, human rights, and the Universal Declaration of Human Rights of 1948 from the United Nations. Zuckert argues for a concept of human dignity completely cut off from the Christian moral tradition.

27 It should be noted that many technologists and cultural leaders, such as Microsoft president Brad Smith, tend to frame the conversation with the presupposition that privacy is a fundamental human right without examining the core of that foundation. In *Tools and Weapons*, this assumption is made clear with the chapter title on privacy claiming it as a fundamental human right but the chapter itself only referencing modern Western democratic values rather than a philosophical underpinning of those ideals. Such fundamental human rights are often seen as a natural outflow of the Universal Declaration of Human Rights of 1948, which serves as the foundation for many of the human rights conversation of the day. See “Universal Declaration of Human Rights,” October 6, 2015, <https://www.un.org/en/universal-declaration-human-rights/>.

28 “*Griswold v. Connecticut*, 381 U.S. 479 (1965),” Justia Law, accessed April 22, 2020, <https://supreme.justia.com/cases/federal/us/381/479/>.

29 Sarah E. Igo, “The Beginning of the End of Privacy,” *The Hedgehog Review: Critical Reflections on Contemporary Culture* 17, no. 1 (Spring 2015).

30 “*Lawrence v. Texas*, 539 U.S. 558 (2003),” Justia Law, accessed April 22, 2020, <https://supreme.justia.com/cases/federal/us/539/558/>.

thought, belief, expression, and certain intimate conduct.”³¹ Self-determination is the lifeblood of modern society in the United States, especially when it comes to the ethics and morality of technology. Any technology or advancement that compromises the autonomy of self can be construed as a power grab by a company or government, as well as a privacy violation of the highest order.

The United States system of governance is based on the notions that the government is instituted in order “to secure these [inalienable] rights [to life, liberty, and the pursuit of happiness].”³² Notice that Jefferson uses the language of “securing these rights,” which presupposes that the rights of citizens are pre-political rights or natural rights. Especially in Christianity, these natural or pre-political rights are viewed in light of existential beliefs about the nature of God and how he created each one of us.³³ But one need not hold to the Christian moral tradition of human dignity as the foundation for true personal privacy, as I will argue below, in order to agree that the government is not creating rights but simply recognizing the rights that existed well before and long after our current democratic experiment is gone.³⁴

Human Dignity and Privacy

The Christian moral tradition grounds the concept of personal privacy in something far greater than human documents or political philosophies, even as these foundations help to bring a common language to a diverse group of people and are marvels of modern democracies. Most modern Protestant moral ethics are based in the concept of human exceptionalism or dignity based in the *imago Dei* (Gen. 1:26-28), where the God of the universe created every human being in his image (Gen 1:26-28) and bestowed on them dignity above every other part of creation.

This Christian understanding of dignity is at odds with many modern definitions of dignity, such as the way that Francis Fukuyama describes the basis for dignity as “the inner self” that is by nature “variable and changes over time.”³⁵ Rather than these modern notions of privacy and dignity often grounded in the pursuit of personal autonomy or freedom, the Christian moral tradition is based in the unchanging image of God that reveals humanity’s true freedom and privacy as found living under the reign of God himself.³⁶ God created everything, including us, and he alone is able to tell us how we are to live and how we are to function as his exclusive image bearers. Thus, we really do not have personal autonomy or true privacy in the manner described in the penumbra of the Bill of Rights or any other democratic value system. We live under the reign of the creator God himself, who knows the deepest recesses of our souls as well as the faces that reveal our true personhood and individualism. In this section, we will explore two ways that privacy can be viewed in light of Scripture and the *imago Dei*: personal property and the inner private life of God’s image bearers.

31 Ibid. In an ironic twist, Justice Kennedy’s words about freedom of thought, belief, and expression are challenged by the very outworking of this logic that denies the rights of citizens, namely people of faith, to live out their personal beliefs in the public square on issues such as abortion and same-sex marriage. Many of the most important religious liberty cases in the last decade revolve around government intrusion into the exact expressions of the beliefs that Justice Kennedy names above.

32 Thomas Jefferson, “Politics & Government: Securing Rights,” accessed April 22, 2020, <https://famguardian.org/Subjects/Politics/ThomasJefferson/jeff0150.htm>.

33 For more on how a theological foundation of human dignity undergirds modern understandings of liberalism and democratic values, see İsmail Kurun, *The Theological Origins of Liberalism* (Lanham: Lexington, 2016), 7-30.

34 Pierre Manent provides a thorough explanation of how one can approach human rights through the lens of natural law. He argues that, without a sense of natural law, “there could not be a human law in the proper sense” because humans would have nothing to evaluate the practicality of the law or its morality. See Pierre Manent and Ralph C. Hancock, *Natural Law and Human Rights: Toward a Recovery of Practical Reason*, Catholic Ideas for a Secular World (Notre Dame, IN: University of Notre Dame Press, 2020), 112.

35 Francis Fukuyama, *Identity: The Demand for Dignity and the Politics of Resentment* (New York: Farrar, Straus and Giroux, 2018), 10.

36 For more on the relationship of personal autonomy and the Christian understanding of human dignity, see Jeffrie G. Murphy, “The Elusive Nature of Human Dignity,” *The Hedgehog Review: Critical Reflections on Contemporary Culture* 9, no. 3 (Fall 2007).

Privacy and Personal Property

As we see throughout Genesis, God created humans in his image and calls them to live in accordance with his law (Gen. 1:26-28; 2:15-17). Prior to sin, Adam and Eve did not need to have the same sense of personal privacy as today, because they were fully known and fully loved by God. There was nothing hidden from one another either, as Adam and Eve were naked and unashamed (2:25). There was nothing to hide or keep private, because God and other image bearers never sought to take advantage of another one for personal or even sinful gain. While naturally there was some privacy in the sense of individualism, there was a fullness and togetherness where nothing needed to be hid from one another or from God himself out of fear or because of the need for security. After the Fall of humanity in Genesis 3, people quickly began to treat one another as mere objects rather than image bearers, to be used or taken advantage of for selfish gain. Sin distorted God's good design for humanity and society at large. Humanity no longer lived in open communion with God and sought to hide themselves from him and one another (3:10). Adam and Eve sought the security of privacy in their sinful and rebellious state. Sin not only broke the open communion with God himself, but also distorted how humans saw themselves in relation to one another. No longer did humanity seek the good of God and good of neighbor, but sought to take God's good gifts and use them to dehumanize their neighbors.

In Genesis 4:8-16, we read how Cain grew jealous of his brother. Instead of seeking the good of his brother, Cain sought to dehumanize his brother and sought to take advantage of Abel for his own gain through the use of "ingenuity and technical skill."³⁷ Cain killed his brother out of a sense of jealousy likely using a tool and essentially denied Abel the God-given dignity he deserved. In verse 9, the Lord questioned Cain about Abel, to which Cain responded "Am I my brother's keeper?" This question hits directly at the core of the ethical implications of the doctrine of humanity by exposing the responsibility that each human has for our brothers and sisters who are also made in God's image. This responsibility flows from the *imago Dei* because it reveals the value and worth of our fellow image bearers and the call to love them as we love ourselves (Matt. 22:37-39). This theme of human dignity and uniqueness is also at the core of the biblical Decalogue, which serves as the summation and the foundation of the entire Law and Prophets.

In Christian ethics, the Decalogue often helps define the parameters of what is meant to live as God's image bearers under his reign and rule as we seek to love God and love our neighbor as our self.³⁸ The eighth commandment, found in Exodus 20:15, gives us some insight into how we are to think about personal property and human dignity, especially in our digital age. The eighth commandment states, "You shall not steal." This act of stealing has two main dimensions: first, a denial of the sovereign care and provision of God, and second, the taking of things given by God to another that do not belong to us. Through the act of stealing, we simultaneously deny God and dehumanize our neighbor by taking that which was given to them and what was to remain solely in their possession.

This concept of personal property is seen throughout many places in today's world as it serves as the foundation for many modern ethical and social codes. Stealing is not just limited to modern theft or criminal practices, but also to the taking of personal property from another for personal gain. In the digital age, personal property violation extends to much of the data collected without consent or permission. Everything about our world today has been digitized, tracked, and

37 Craig M. Gay, *Modern Technology and the Human Future: A Christian Appraisal* (Downers Grove, IL: IVP Academic, 2018), 150.

38 For more on the role of the Decalogue in Christian ethics, see Carl F. H. Henry, *Christian Personal Ethics*, 2nd ed. (Grand Rapids: Baker, 1979), 197-99. Also, see Richard B. Miller's article on "Theology and Rules" in Gilbert Meilaender and William Werpehowski, eds., *The Oxford Handbook of Theological Ethics*, Oxford Handbooks (Oxford: Oxford University Press, 2005). and David W. Jones, *An Introduction to Biblical Ethics*, ed. Daniel R. Heimbach, B&H Studies in Christian Ethics (Nashville: B&H Academic, 2013).

cataloged. Digital privacy, much like personal privacy, is a must in order to protect the vulnerable and stand for the oppressed, which serves as one of the roles for government as instituted by God himself. Tracking the faces of individuals, even for security or mass identification purposes, brings about a fear in the minds of many, especially in the West, because of how these tools can pierce through the veil of personal privacy and steal the dignity from the individual created in God's image.

Private life of image bearers. While God knows all things and sees all things, humans are not like God in this sense. There is an obvious and pronounced divide between what is done in public and the private inner life of the individual. Personal privacy is requisite in a broken world, marred by sin, and full of mistrust in order to follow God's command authentically to love our neighbor as ourselves (Matt. 22:39). Sinners often seek to take advantage of one another, as we saw with the example of the first brothers, Cain and Abel. Jesus himself highlights the private life of image bearers in the Sermon on the Mount in Matthew 6. Here he speaks of the reward of seeking God and practicing righteousness in private (v. 1), giving in private (v. 2), and praying in secret in order not to be seen by others (vv. 5-6). But Jesus gives a helpful reminder of the all-seeing and all-knowing eyes of God, who knows what we do in private who will reward those who are faithful (vv. 4, 6). Christ illustrates in this famous sermon about the Christian life that the public life of his followers must coincide with their private life as well so that they seek God with their entirety (Matt. 22:37).

In 2 Samuel 11, we see one of the most vivid and pronounced accounts of the violation of privacy and the corruption of power by King David himself. In verse 2, we read that David was walking on his own roof and saw a beautiful woman bathing on her own roof.³⁹ Ultimately, he impregnated her and had her husband murdered on the battlefield in order to cover up his sin and crime. The Scripture shows that Bathsheba was bathing in the privacy of her own home, as the leader of the government used his power to take away her dignity and privacy.⁴⁰ Not only was she a woman taken advantage of by a powerful man, but an image bearer violated through King David's personal surveillance of her during this intimate moment. David was later rebuked by Nathan and wrote some of the most powerful words of repentance, found in Psalm 51. These powerful words of a broken man are a reminder of the saving nature of God and how the public/private divide is not an eternal reality, but a necessary divide in between the times until Christ's return.

Role of the Face in Christian Theology

Municipalities and state governments have long debated the merits of facial recognition technology, alongside the potential downfalls, with most deciding to put a ban on the technology for police and government use for the time being. In the West, there seems to be an innate hesitation to the deployment of this technology, juxtaposed with most modern technological innovations that are often rushed through development and deployed before the full effects are known and accounted for. So why is facial recognition so different and why does the West in particular seem so hesitant to adopt the widespread use of these tools?

One of the defining features of facial recognition technology is the use of facial data, which is highly personal and intimate. In the West especially, society places a significant value on the face for

39 It should be noted that Bathsheba was bathing on her roof in order to cleanse herself from her menstrual cycle, as Leviticus 15:19 commanded of her. This invasion of her privacy was not simply that of a casual observer or random sexual encounter, but one where a government leader used his power to seduce a woman in the middle of her cleansing, which is a deeply personal and private moment.

40 There has been considerable debate as to whether Bathsheba was bathing in private because of her location on the roof, which was common in that time. As Robert D. Bergen describes, "Since no Israelite house had running water at that time, bathing often may have been performed privately, in the enclosed courtyard that was a part of many Israelite houses; alternatively, it may have been done openly near the city's public water source. There is no indication in the text that the woman deliberately positioned herself so as to entice David." 1, 2 *Samuel*, Vol. 7, The New American Commentary (Nashville: Broadman & Holman, 1996), 364.

the individual and this importance is often attributed to the Judeo-Christian influence on our Western mindset. Roger Scruton in his book, *The Face of God*, points out that for humans “the face is an instrument of meaning, and mediates between self and other in ways that are special to itself.”⁴¹ The face is the main identifier for humanity with one another, and the place that our emotions and thoughts are often on full display for those around us to see.⁴² From the earliest writings of creation itself in the book of Genesis, humans are seen to be set apart from the rest of creation, mainly in terms of the *imago Dei* discussed above.

God created humans in his image and for a relationship with him. This relationship was a face-to-face relationship, perfect communion between God the creator and the only creature made in his image. Adam had nothing to hide from himself or others and this included his face from God. But, as sin entered the world, Adam and Eve hid themselves from the face of God because of their shame and rebellion (Gen. 3:8). This face-to-face communion was shattered, and humanity could not long be in his presence or even see God’s face (Gen. 3:23-24, Exod. 33:23). No longer could they come face-to-face with God because the face revealed the deepest sense of their personal identity including their shame before a Holy God. Scruton highlights this sense of shame by mentioning Masaccio’s well-known fresco of the “Expulsion from Paradise,” which depicts Adam and Eve being banished from God’s presence in the garden.⁴³ Masaccio shows Eve covering her nakedness, representing the bodily shame, and Adam covering his face, representing the shame of the soul for their rebellion against God and his rule not to eat of the forbidden tree. Thus, the face held a significant place within the earliest accounts of Creation and the Fall, setting the foundation for the rest of Scripture.

By Genesis 4, God asked Cain why his face has fallen because it is obvious through his facial expressions that something is bothering him. This question is not because God does not know what is troubling Cain, but a reminder to Cain that God sees and knows all things, including the deepest recesses of the soul, its emotions and desires. The Bible reveals that Cain was angry over his offering being rejected in light of Abel’s. His face fell because his heart was troubled and distraught. The face is a window into our inner life which reveals the most personal and private aspects of our life. The face is not just another indiscriminate aspect of the body, but the most visible signpost of someone’s identity, worth, and dignity as one of God’s image bearers. Thus, given how our faces are recognizable and revealing of each person’s individual personhood, we naturally feel uneasy about facial recognition systems and surveillance. This one-sided recognition reveals the power dynamic weighted toward one side, where we feel exposed and fully known, but without the reassuring love that we need to feel truly comfortable and cared about as individuals. Robert P. George captures this power differential by saying,

If your interiority is available to me, but mine is not available to you, I might be able to dominate or manipulate you, but our true co-operation (i.e. co-operation in the normative sense that truly realizes the good of interpersonal harmony) would be impossible. Co-operation is possible only if we are each in control of what we communicate to each other and can therefore communicate it freely.⁴⁴

George goes on to show that this “interiority of individuals and communities is their privacy,

41 Roger Scruton, *The Face of God* (London: Bloomberry, 2020), 75.

42 Scruton points out on pages 74-75 how Charles Darwin believed that animals exhibit similar emotive faces, going as far as to find similar facial expressions between animals and humans in order to add additional grounding to his theory of evolution. But, as Scruton rightfully states, while animals can read facial signs among themselves, they are unable to express complex emotions or ideas by these expressions that humans often do, which speaks to a form of human exceptionalism and uniqueness in creation.

43 Scruton, *The Face of God*. 75.

44 Robert P. George, *Making Men Moral: Civil Liberties and Public Morality*, reprinted (Oxford: Clarendon, 2001), 212.

and functions as a moral right of the individual and that governments have a moral right to respect this privacy and even protect it.⁴⁵ Through facial recognition, we feel as though our entire self is revealed and able to be controlled because of the prominence of the face itself. We feel powerless in light of this powerful tool, especially if this tool is in the hands of a government that we may or may not trust as we saw Smith and Browne explain in their book *Tools and Weapons*.⁴⁶ As our face goes, so our whole self goes, privacy and all. We feel as though we are fully known by another but not truly loved, both of which are required for trust that sustains a relationship.

NAVIGATING THE FUTURE TOGETHER

Facial recognition technology feels like a Hollywood sci-fi thriller tool of the future. Today, some may dismiss ethical discussions of this tool as far-fetched and unnecessary. But the widespread adoption of this surveillance technology is no longer in question of if, but when and how soon. Will the church of the Lord Jesus Christ be prepared to give a reason for the hope within her and address one of today's great ethical issues with real threat of an erosion to our personal privacy, that, if in the wrong hands, could lead to massive dehumanization of our fellow image bearers?

In this article, I have shown how already difficult and real the ethical implications of this technology are in our world within the context of such divergent views of personal privacy. Using the Christian moral tradition's grounding of human dignity, we have seen the importance of the *imago Dei* and how that image is presented on full display in the faces of our neighbors. But what role should the government play in these technology policy discussions and how should a society deal with these tough issues if human dignity is the guiding ethic?

First, the role of government in the Christian worldview is to pursue justice for the oppressed, vulnerable, and least among us. As VanDrunen explains, "government authority is a legitimate exercise of human rule...an exercise that respects the dignity and calling of all human beings as divine image-bearers."⁴⁷ This exercise of government will naturally lead Christians to have often divergent views on how governments are to fulfill these God-given responsibilities and mandates, but it is not up for debate whether all people are worthy of our care and respect as people made in God's image. As James K.A. Smith puts it, "A society in which judgement is carried out justly, on behalf of the vulnerable, is a society that reflects the political norms of Yahweh."⁴⁸ Thus, governments must choose to pursue policy measures and legislation that maximize the good and mitigate the evil that may arise in the use of facial recognition technology.

Second, government and civic leaders must be thoughtful about what role facial recognition should play in the hands of government as they base their decisions on the consent of the governed. This means not rushing through legislation on these important matters because of the grand importance and role of the face itself in the lives of human beings. The face is the window to each soul and one of the most unique things about humanity as people made in the likeness of God. This means that rich and diverse debate must occur in all of society before these tools are implemented at mass scale. These debates may allow for testing of technology in a controlled environment in order to mitigate the risk of bias and discrimination in an ecosystem where the weight of failure is low. Certain local, state, and federal regulations are likely to be needed in order to maintain a hold on these tools properly because of how easily they can fall into the wrong hands or be trusted far beyond their proven usefulness. Societies also must decide to what extent we want to maintain any semblance of personal privacy and a private life.

45 Ibid., 212-213.

46 Smith and Browne, *Tools and Weapons*, 213-214, 227.

47 David VanDrunen, *Politics after Christendom: Political Theology in a Fractured World* (Grand Rapids: Zondervan Academic, 2020), 329.

48 James K. A. Smith, *Awaiting the King: Reforming Public Theology*, Cultural Liturgies, Volume 3 (Grand Rapids: Baker Academic, 2017), 71.

Third, policy proposals for regulating facial recognition technology must be designed in order to maintain trust and accountability for any governmental use of this technology. Openness and transparency about how these tools are built, designed to function, and how they will be reviewable should be central to these proposals, because these safeguards will help protect the dignity of citizens as fellow image bearers.⁴⁹ Any regulatory proposal also must include provisions for the protection of personal privacy against unwarranted government intrusion or abuse. These policy provisions must also extend past mere consent to be tracked or have one's data collected. The Christian human dignity approach to personal privacy, as shown, holds that while consent is requisite, there are additional responsibilities and ethical burdens placed on individuals to love other fellow image bearers and seek human flourishing for all. By extension, these mandates extend to governments to respect the rights of the individual, as a divine image bearer, and uphold justice for all.⁵⁰ With the tendency of privacy policy consent waivers layered in legal jargon and nearly unreadable to the average consumer, many may not even know the extent of their consent when signing up for digital services or agreeing to the use of tools like facial recognition. While the political grounding for privacy will vary in a pluralistic society, personal privacy must be paramount in proposed legislation while balancing the needs of the public with any given technology.⁵¹

CONCLUSION

Privacy is not a discovered right, nor is it made up of other rights granted to us by governments or its leaders. In the Christian tradition and understanding of government, these entities do not grant rights but recognize certain pre-political realities as instituted by God himself in creation. Personal privacy is a God-given reality for his creatures who live in a broken and sin-tainted world often at odds with itself. While God himself knows all things and acts in love consistent with his character at all times, his image bearers do not and often choose their own selfishness and pride over and above our neighbor in direct contradiction to the greatest commandment given to us by the Son of God himself in Matthew 22:37-39. Humanity seeks power and knowledge, but often without the unceasing love and sacrifice that God shows to the world (John 3:16). God himself gave up his own privacy in order for his people to know and cherish him properly. As the prolific public theologian Carl F.H. Henry stated, God “alone turns his personal privacy into a deliberate disclosure of his reality.”⁵² God chose to disclose to humanity who he is and what he did for a people who would be his own. Personal privacy will also be a thing of the past once God finally comes to redeem this world as he promises in Acts 1:7-11.

If Clearview AI has taught society anything, it is that facial recognition technology is here to stay. With all of the potential benefits of tracking, security, and convenience, our society cannot simply reject this innovation at face value. Society must have an ethical framework robust enough to recognize and wield these tools to benefit the flourishing of all our neighbors and the communities they form. The Christian moral tradition, grounded in the dignity, value, and worth of all people made in the *imago Dei*, has the foundation and framework to help society navigate these thorny ethical questions of facial recognition technology for governmental use with clarity, conviction, and compassion for humanity.

49 For further background of the need for transparency in any AI or facial recognition legislation, see Alex Engler, “The Case for AI Transparency Requirements,” *Brookings* (blog), January 22, 2020, <https://www.brookings.edu/research/the-case-for-ai-transparency-requirements/>.

50 The Christian ethical standard based on human dignity referenced here is also the basis for “Artificial Intelligence: An Evangelical Statement of Principles,” April 11, 2019, <https://erlc.com/resource-library/statements/artificial-intelligence-an-evangelical-statement-of-principles>. This ethical statement and framework was led by this article's author and expands on the ethical mandate to care for the oppressed, vulnerable, and weak regardless of current consent policies. See also George, *Making Men Moral*, 212-213.

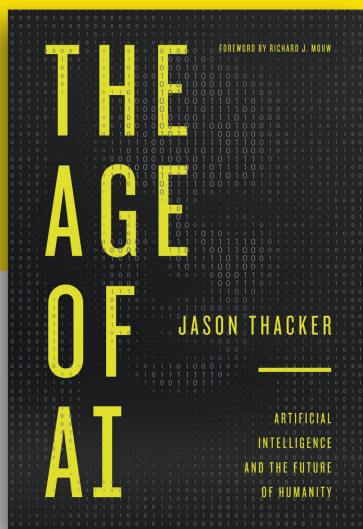
51 For more on the tensions between privacy and the public good, see Stoddart, *Theological Perspectives on a Surveillance Society*, 132-140.

52 Carl F. H. Henry, *God, Revelation, and Authority*, vol. 2, 6 vols. (Wheaton, IL.: Crossway, 1999), 17.

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“I am deeply grateful for what I have learned in reading this book about matters that are of crucial importance for the life of the Christian community.”

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