

**Biometrics for Personal Identification:**

**Recapturing Ethics and Values in the Public Policy-Making Process**

**A Rawlsian Philosophical Analysis**

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**Thesis submitted to the Faculty of Philosophy, Saint Paul University, in partial fulfillment  
of the requirements for the degree of Master of Arts in Public Ethics**

**Ottawa, Canada**

**March 2015**

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## Table of Contents

Table of Contents .....	i
<b>Abstract</b> .....	iii
<b>Acknowledgements</b> .....	iv
<b>Abbreviations</b> .....	v
<b>Introduction</b> .....	1
<b>1.0 Biometrics: A Century of Philosophical Debate</b> .....	10
1.1 The Evolutionary Mapping of Biometrics.....	11
1.2 Rawls and a Procedure for Ethics .....	13
1.3 The Role of Philosophers in Policy-Making .....	14
1.4 Initial Privacy Indicators circa 1890 .....	15
1.5 Personal Identity Privacy or “Records Prison” .....	16
1.6 Contemporary Scholars Continue the Disconnect Debate .....	23
1.7 International Commentaries: Ethics of Biometrics .....	24
<b>2.0 Promoting a National Identity Card: 15 Years of Debate and Commentary</b> .....	29
2.1 Background Paper – Citizenship and Immigration Biometrics Forum .....	34
2.2 Biometrics: Implications and Applications – Biometrics Forum Report .....	38
2.3 Canadian Government Review Committee .....	40
2.4 Implications and Implementation of Biometrics for Visitor Visa Applications .....	44
2.5 Canadian Identity Card – The Next Steps .....	48
<b>3.0 Public Ethics, Policy-Making and Philosophy</b> .....	55
3.1 Scholarly Reception of Rawls’s Works .....	59
3.2 Public Interest and Public Reason .....	66
3.3 Capacity to Guide and Motivate .....	67
3.4 Key Ethical Issues: On the “Expansion of Function” and Rawls’s “Moral Powers” .....	69
3.5 Rawls’s Liberty Principle and Equality Principle as Policy-Making Building Blocks .....	71

3.6 Rawls and Social Cooperation.....	74
Chart 1. Rawlsian Philosophical Thoughts to Recapture Ethics Within Policy-Making .....	81
<b>4.0 Recapturing Ethics in the Policy-Making Process .....</b>	<b>82</b>
4.1 A Rawlsian Framework to Measure Public Policy .....	83
4.1.1 Ethics and Morals .....	86
4.1.2 Human Rights .....	88
4.1.3 Dignity.....	90
4.1.4 Governance.....	91
4.1.5 Justice as Fairness .....	93
4.2 Filling the Ethical Gap for a Canadian Identity Card .....	94
4.3 Convergence of Biometric Technologies .....	97
4.4 Emergence and Application of Brain-Reading Technologies .....	99
Diagram 1. Recapturing Ethics in the Policy-Making Process with Rawlsian Moral Norms .....	101
<b>Conclusion .....</b>	<b>103</b>
<b>Bibliography .....</b>	<b>110</b>
(i) Works Cited.....	110
(ii) Works Consulted .....	114

## **Abstract**

Technological biometric advances for personal identification beyond fingerprints and iris scans, combined with national and international storage and exchange of personal information, raise ethical concerns. Philosophers and scholars have argued during the past century for increased involvement within policy-making. Through the work of John Rawls, a noted 20<sup>th</sup> century philosopher, the thesis examines appropriate and applicable ways to bridge the gap between philosophy and the practical requirements of public-policy making. Ethical considerations were absent during a 2003 Forum on Biometrics: Implications and Applications for a biometrics identity card. An outcome is the 2012 introduction of mandatory biometrics (digital facial photo and fingerprints) for visitor visa application documentation. Evidence also indicates continuing support for a Canadian biometrics identity card. Moreover, the technology is fast moving into the realm of “brain-reading” and the ethical question of “mind-privacy”. Nine words in a 1975 policy-making article by Albert Jonson and Lewis Butler are as potent today as first written forty years ago. “There appears to be no room for ethical experts.” The thesis seeks to recapture ethics within public policy-making.

## Acknowledgements

In following a long-standing tradition, I wish acknowledge the valuable help that I received to initiate and complete my thesis from the faculty at Saint Paul University. Professor Gregory J. Waters, my thesis supervisor, who instilled an interest and challenged my knowledge of public ethics; Professor Richard Feist whose his exceptional public ethics course helped organize and prepare a thesis; and, to Professor Rajesh C. Shukla, whom I met at a university Open House and who encouraged me to register for the Public Ethics program. Also, Nils-Frederic Wagner, Ph.D., who identified “brain-reading” and “mind-privacy” as future areas of biometrics exploration. The journey has been a personal reward shared with my wife Liz and son Scott, who effectively and efficiently challenged the structure and editing of my drafts. Many years ago I completed my first MA at the University of Toronto, including a major paper on Rawls’s *A Theory of Justice*, at a time when Rawls was starting to be noticed. The initial interest in Rawls by Professor S.J. Coleman is acknowledged.

## Abbreviations

CIC	Citizenship and Immigration Canada
EEG	Electroencephalography
fMRI	Functional Magnetic Resonance Imaging
ID	Identity Card
MEG	Magnetoencephalography
NSTC	National Science and Technology Council U.S.
PMF	Performance Management Framework
SIN	Social Insurance Number
Committee	Standing Committee on Citizenship and Immigration
VAC	Visa Application Centre

## Introduction

“Government becomes even more a web of thousands of discretionary acts performed by hundreds of civilian, intelligence, military, bureaucratic officials, in the company of lobbyists and publicists. Most of the acts are hidden, many of them secret. No one, no matter how well placed, knows the full extent of activity. From these bureaucracies come secret concerted long-term policies.” (Kateb, 2011, 195)

Technological advances in biometrics (from the Greek “bio,” “life” and “metrics” “to measure”) have increased opportunities for both public and private sector organizations to obtain, analyze, store, and share personal information to confirm individual identification. Today, digital finger prints, iris scans, digital facial photographs, and personal odour are part of the tool kit of the biometric information gathering and recording technologies to collect unique personal information. Moreover, as the thesis was in final edits, evidence emerged that biometrics/identity management appears to have played a prominent role in ultimately discovering the true identity of the ISIS terrorist known as “Jihadi John”. Tomorrow, the capture, recording and data storage of an individual’s mental privacy will emerge from current research work associated with mindreading and decoding of brain activity. The expanding use of current and future biometric applications raises important philosophical questions of ethics, morals, and human dignity which are absent within the current public policy debates focussed on privacy.

My central thesis is: There is an absence of ethical reflection on biometric policy for personal identification and a need to apply John Rawls’s philosophical thoughts towards ethics, morals, and human dignity. An examination of the role of ethics within public policy is a timely response to the increased public and political attention in the media. There is a need to find

answers in response to the absence of ethics and to identify philosophical remedies in order to recapture ethics and values within the art of public-policy making. The evidence of the gap is presented by philosophers and scholars who argue that there is a need for increased presence of their views within policy-making. The thesis also examines a 2003 Biometrics Policy Forum and a comment that “ethics and dignity” considerations were “not addressed.”<sup>1</sup> (*Biometrics: Implications and Applications for Citizenship and Immigration*, 2003, 43, now cited as *Biometrics Forum Report*)

I will support this thesis by providing evidence of the gap between philosophy and public policy and the efforts by philosophers to align their thoughts to public policy-making. In addition, I will argue that the theories, principles, and rules offered by philosopher, John Rawls, provide some key ethical and moral insights that will allow us to cross the chasm between policy and ethics. To this end, I draw on his concepts of human rights, dignity, and justice as fairness. There are both practical and conceptual problems that plague the subject matter of biometrics and ethics.

The reader may ask: Why Rawls? Rawls’s philosophical thoughts and development of his approach to morals, ethics, and human rights offer markers and indicators that provide links to bridge the divide, and arguably cast new light on how to inculcate ethics within the biometrics dialogue. The solution, I argue, is found by transferring the qualitative measurements of the philosopher to the quantitative performance outcomes expected by the policy-maker.

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<sup>1</sup> Report on a Forum hosted by Citizenship and Immigration Canada, October 7 and 8, 2003 – Ottawa, Ontario. The *Biometrics Forum Report* and the *Forum Background Paper* and other documents relating to the Biometrics Forum are available on a Web site created by Citizenship and Immigration for the event: <http://cic.forum.ca/english>.

Rawls proffers that, “Perhaps the principal aim of ethics is the formulation of justifiable principles which may be used in cases where there are conflicting interests to determine which one of them should be given preference.” (Rawls, 1951, 186) As an adjunct to his early position on ethics Rawls lists four traits as tests that characterize a reasonable man. The first (1) is a willingness to use inductive reasoning to decide what is proper. Second (2), the ability to assess a moral question to find reasons for and against. Third (3), thinking with an open mind with a willingness to reconsider further information. And, fourth (4), awareness of the influences of prejudice and bias. (Rawls, 1951, 178-179) The approach provides additional evidence of the capacity of Rawls’s work to be reformed into more contemporary points of ethics when matched against biometrics.

For example, what type of questions would a “reasonable man” i.e., a “reasonable policy-maker” pose in order to conduct an ethical examination of biometrics? Within the concept of the “reasonable man” one considers the life impact on the person through the application of biometrics; at the same time, the author ponders the direct reference in the *Forum Background Paper* that biometrics, “does not involve the collection of information about the person, but rather information of the person, that is intrinsic to them,” (CIC Biometrics Forum Background paper, now cited as *Forum Background Paper*, 15 ) I would argue that the four points describing a “reasonable man” respond directly to a biometrics policy in search of an ethical underpinning.

The thesis argues that, while the technology and associated intrusive range of biometrics applications increases exponentially each year, there is a widening gap of polemics and evidence to demonstrate ethical support through debate, analysis or reference to philosophical models. The results of a thorough examination of the four decades of the scholarly works by the renowned

20<sup>th</sup> century philosopher John Rawls, I will argue, offers guidance. I will show that his thoughts lay the foundation for a philosophical analysis structure to ensure that values and ethics<sup>2</sup> are measured and given considered weight when developing policies for the use of biometrics for personal identification.

Two independent and separate motivators provided genesis for the thesis, examination assessment, research and analysis developed in this thesis. First, a single comment line buried deep and almost lost within an important Canadian consultation process dealing with the use of biometrics for personal identification and the initial discourse on a national identity card is germane to the thesis. The summary findings of a Citizenship and Immigration Canada forum on biometrics, which is developed in detail as a representative case in the paper, refers to absence of “ethics and dignity” within the two days of ministerial speeches, academic reports, background papers, and survey questions and summaries. Secondly, two brief sentences, found in the literature review, confirmed and focussed the arguments within the paper. Joseph Monti identifies a crisis in the need to interrelate ethics and public policy to “attend to an expanding laundry list of public moral problems.” (Monti, 1982, 23) Furthermore, he adds: “There is the need to reconsider the meaning of ethics as public science, as well as recapturing the central role of ethics in the policy making process.” (Monti, 1982, 23)

The search for answers to these two questions is threaded throughout the thesis. Why is there no debate on ethics consideration within an important national debate on identity cards? Why is there no meaningful meshing of “public policy” and “public ethics” with the biometrics debate? I argue that biometrics is a public ethics issue of the first order and requires

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<sup>2</sup> The term “values and ethics” is reflected in the 2012 *Values and Ethics Code for the Public Sector* published by the Treasury Board of Canada. The Code is designed to guide decisions, actions, policies, processes and systems.

practical and conceptual analysis. The majority of biometric references deal with the technical issues, applications, data protection and privacy concepts. Too often there is little reference to the need to develop and link values and ethics.

Monti provides a starting point which is supported through the literature review involving a more detailed analysis of the missing links to an assessment on philosophical discussions. These include indirect and direct reference to morals, ethics and issues of human rights and dignity within the field of biometrics. The results of the review further confirm the absence of ethical reference points, nationally and internationally, in the literature. The review demonstrates that during the past 125 years philosophers, scholars, lawyers and researchers have continued to find ways to inculcate philosophy and political science with limited success despite repeated and ongoing attempts. Upon reflection of the literature, I would argue, that their efforts to achieve a higher standard of recognition and participation in the public policy arena are largely unsuccessful largely due to the inability to reach a consensus. The thesis seeks to overcome this gap by building on the thoughts of Rawls to provide a philosophical model or check-list that will contribute to the identified absence of ethics and values.

Initially the intention of the thesis was to examine the absence of ethics in the Canadian government program to consider a national identity card. Through my reading and research, the thesis topic has expanded to include debates concerning the ethical, moral and empirical risks that justice as fairness entails. Risk assessment is crucial to public policy formulation dealing with biometrics and personal identification. The question must be asked, and a response provided, to address the absence of philosophical thought within public policy. Evidence to

support the need is identified through a century of scholarly arguments described in the following literature review.

The development and application of the policy and administration of biometrics requires a philosophical framework to address the missing links to ethical considerations to overcome the identified gap between public policy and the quest for justice as fairness in this domain. Examination of biometrics shows that the current use of biometric measurements is publically acceptable as a means to achieve a desired result, such as obtaining a licence, health card, and passport or travel visa. Advances in technology and range of biometric applications increases exponentially each year. There is a widening gap of evidence to demonstrate ethical support through debate, analysis, or reference to philosophical models.

I will respond to the question raised in the thesis statement by articulating a model to complete the ethical gap and to test philosophical arguments through the application of Rawls's theories of freedom and rights, morals and the role of the state. The supporting claim is that there is an absence of moral and ethical connectivity of biometrics to support public policy with sound public ethics. A framework that responds to this absence and serves towards closing the gap, I argue, may be found in the philosophical arguments through the work of Rawls.

I start with a discussion of some of the arguments that have been offered to first identify, secondly, test, and thirdly, to apply an ethical model in order to support public and private sector policies concerning the use of biometrics for personal identification.

The need for human rights to support a framework of moral and ethical values to strengthen biometric public policies is of paramount social and political concern. I argue that there is a need to initiate and encourage the development of a line of argument to respond to weaknesses identified through the applications of biometrics and the increasing use of biometric technology in both the public and private sectors. Emerging from this overview are more questions than answers, each requiring attention and this is where Rawls can contribute to the argument required to take the narrative framework to the next level as part of the bridging process.

Arising in tandem with the use of biometrics for an identity card is the emergence of biometrics for visa applications requiring electronic fingerprints and photos to support entry to Canada along with storage in shared international databases. The biometrics public policy for border security involves personal identification and therefore the thoughts offered by Rawls may shed light on an ethical framework. I argue that Rawls wants to ensure the protection of individual human rights while acknowledging the role of the state to maintain and protect these rights. I conclude that an examination of Rawls's theories demonstrates that the arguments help to direct and focus further thought to align biometric public policies with an ethical framework.

Chapter One "Biometrics through Time" provides an overview and examines (1) the history, (2) growth, (3) current applications, and (4) expected enhancements of biometrics. The focus is on national programs, specifically a Canadian identity card program while recognizing the international influences and driving forces. Chapter Two "Promoting a National Identity Card" introduces two recent Canadian case examples. These involve a national identity card and biometrics data collection for foreign visitor visa applicants to Canada. The cases are supported

with a national and international literature review that scans the past, present, and future of biometrics, and indicates the sources and emerging questions that points to the absence of a philosophical and ethical justification for biometrical practices and theory. Chapter Three “Public Ethics, Policy-Making, and Philosophy” focuses on John Rawls. We identify ideas in his theory of justice that help to align public ethics and policy-making. At the same time, it is important to consider the refinement of Rawls’s philosophical thoughts and enhancements of his approach to morals, ethics, and human rights for markers and indicators that could provide helpful links. Chapter Four “Recapturing Ethics in the Policy-Making Process” represents a synthesis of the foregoing elements that bridges the gap between public policy and philosophy. The inherent risks entail avoidance, apathy, complacency and denial in the absence of a moral and ethical foundation.

It is worthwhile noting that through the search for references and background to support the development and claims in the thesis new “twists and turns” were revealed. And yet, all returned to the focus of the thesis terminology: The absence of philosophical ethics within biometric public policy. Following Rawls’s 1981 *A Theory of Justice*, scholars acknowledged and referred to the work in their own approaches to the examinations and criticisms of the ethical gap. However, the gap is continued as arguments within the literature are not taken to the next step. This involves the important step to develop a working framework to be used by public administration practitioners in their development and evaluation of personal identification biometrics. Not including an assessment and application of Rawls’s work is a missed opportunity. Therefore, I continue to be convinced of the merits of revisiting Rawls’s theories, principles, and laws with particular reference to his concept of “thought experiments”. Combining Rawls’s theories with the ethics and morals of biometrics for personal identification

is venturing into unknown and unresolved scholarly territory; but, as argued herein it is important to initiate the philosophical ethical debate and offer a form of redress to the pressing questions posed by biometrics and personal identification.

The principal questions are: What are the philosophical issues, theories and applications to redress the identified and acknowledged gap? And, what are the required foundational considerations and models to link philosophical theories with the practicalities and expectations of public policy pursuits?

Citizenship and Immigration Minister Denis Coderre, speaking to the Standing Committee on Citizenship and Immigration in February 2003, said, “A national ID (identity card) is simply a tool that permits the bearers to prove, with a high degree of certainty, that they are who they say they are” (Standing Committee on Citizenship and Immigration, Thursday, February 6, 2003). There is no evidence within the Committee transcripts of questions or references to the role of ethical concerns which I argue is a serious omission within the public policy analysis work. Therefore, Chapter One examines the literature from the past century in order to assess whether or not there exists an absence of ethics in biometric public policy-making.

## 1.0 Biometrics: A Century of Philosophical Debate

The debate about the absence of philosophical inclusion of ethics and values within public policy is reinforced through evidence from the literature review. Past and present discussions are examined in wide-range of philosophical texts with the ultimate objective of seeking some form of resolution to bridge the gap with the central focus on Rawls. The review also considers the range of academic literature with references to the development and history of personal identification to determine parts of the literature that support and justify the thesis of this work. Moreover, the literature review assists with understanding the current debates by reflecting on key indicators already raised, and thereby encouraging discussion for the issues and debates emerging today.

Setting the warp and weave of the literature are two substantive articles by Professors Albert Jonsen and Lewis Butler, '*Public Ethics and Policy-Making*' (1975) and Professor Dan Brock's, '*Truth or Consequences: The Role of Philosophers in Policy-Making*'. (Brock, 1987) The authors identify the separation of philosophy and policy-making and offer their reasons. The separation is largely based on thought (philosophy) versus action (policy-making). Each argues that the gap problem exists because of the non-compatible languages and thought processes of the philosopher and policy-maker.

The Chapter is separated into sub-divisions to reflect the past century including fifty years of philosophical works by Rawls. This begins with his 1951 article “Outline for Ethics”<sup>3</sup> and ending with *Justice as Fairness: A Restatement* in 2001. My aim in supporting the thesis is to highlight the wide span of literature showing the disconnect between philosophy and policy-making. But first a brief history of biometrics.

### 1.1 The Evolutionary Mapping of Biometrics

Leaving a personal mark is not new. It is believed that 31,000 years ago cave dwellers placed their palm prints beside their wall paintings as a note of personal identification. Moreover, it could be argued that this use of a personal biometrics mark to provide a signature was voluntary and without external influence, control, or an ethical consideration of human rights. Could this represent a hint towards a [Rawlsian] original state of nature? <sup>4</sup>

Fingerprint classification was first introduced in 1892; iris patterns in 1936; facial recognition in the 1960’s; DNA capture and analysis in 1998; and, as we now know in 2015 that brain imaging technology is emerging to read one’s thoughts directly from brain activity via the use of electroencephalography (EEG) and magnetoencephalography (MEG).<sup>5</sup>

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<sup>3</sup> Rawls notes in the Preface to *A Theory of Justice* (xi): “I have followed (in *A Theory of Justice*) with some modifications the point of view of my “Outline for Ethics”. *The Philosophical Review*, vol. 50 (1951).

<sup>4</sup> A timeline of biometrics history along with a detailed narrative is found in *Biometrics History*, U.S. Committee on Technology, Committee on Homeland and National Security, Subcommittee on Biometrics, August 7, 2006. Reference is also made to cave dwellers: “In a cave estimated to be at least 31,000 years old, the walls are adorned with paintings believed to be created by pre-historic people who lived there. Surrounding these paintings are numerous handprints that are felt to have acted as an un-forgettable signature of its originator” Subcommittee Report, 2006, 1).

<sup>5</sup> *Ibid.*

Handprints were placed on the back of workers' contracts in 1858 to confirm their identity on payday. The claim is made that this practice within the civil service of India is the first recorded evidence of the use of the handprint for personal identification. (Komarinski, 2005, 29)

Let us now turn from the history of the technical aspects of biometrics to the leading argument that consideration of ethics within the technological applications of biometrics through the centuries is absent. A review and assessment of the technical texts, journal articles, and related policy documents shows no evidence of ethical and moral considerations of ongoing enhancement of biometrics for personal identification with the ultimate objective to ensure security and safety. We study the absence of ethics in greater detail in Chapter Three with the Canadian Citizenship and Immigration proposed use of biometrics for identity cards and actual use for visitor visa applications.

Four recurring and consistent themes emerge to confirm that a gap exists between the public policy science and philosophical reflection on ethics, morals, and human dignity associated with privacy and personal identification. The four points are an: (1) absence of philosophical discourse with political science; (2) absence of moral and ethical references points to align with privacy concerns; (3) absence of polemics dealing with biometrics for personal identification; and, on a more positive note, (4) the support, recognition, and citations given by the philosophical community to Rawls almost immediately after the 1971 publication of *A Theory of Justice*. However, even in (4) above, there is also a noteworthy absence of literature concerning the application of John's Rawls's theory. Therefore, it is important to reflect on Rawls's work and his contribution to the debate on ethics and values through his justice as fairness thoughts.

## 1.2 Rawls and a Procedure for Ethics

In 1951 John Rawls wrote an ‘Outline of a Decision Procedure for Ethics’. The paper appeared in the Duke University journal *The Philosophical Review*. Rawls’s “outline”, introduced some twenty years before *A Theory of Justice* and fifty years prior to *Justice as Fairness* in 2001. The paper established a philosophical proceduralism in a philosophical ethics baseline of his thoughts among his mid-20th contemporary philosophers. Rawls asks the question, also asked similarly by others preceding him: “Does there exist a reasonable decision procedure which is sufficiently strong to determine the manner in which competing interests should be adjudicated?” (Rawls, xx) Moreover, he expands the question further by developing the thoughts which will follow his work through the decades, and which will provide a turning point within this paper to respond to the argument and claims to respond to the ethical and moral gap within the use of biometrics. He asks: “Does there exist a reasonable method for validating and invalidating given or proposed moral rules and those decisions made on the basis of them?” (Rawls, 1951, 177)

Rawls reflects on his initial principles directed to ethics and writes, “It is hoped that some principles [of morals and ethics] will exhibit a capacity to win free and willing allegiance and be able to implement a gradual convergence of uncoerced opinion,” which will be noted in the subsequent specific case examination. (Rawls, 1951, 188) Rawls introduces his questions, develops his arguments with further questions, and ends with the comment that “at some future point I hope to be able to offer something more constructive.” (Rawls, 1951, 197)

While Rawls develops his theoretical ideas of justice and fairness with laws and rules Miller's arguments to develop what he terms the challenge of a "new legal framework".<sup>6</sup> The Quest for a New, I would argue that while Rawls is expanding his thoughts with *A Theory of Justice* and encouraging application of his general principles and theories through "thought experiments."

In 1981, the eleventh printing of *A Theory of Justice* appeared (Hereafter cited as TJ). Rawls's work represents a continuation of the maturing and yet unresolved discourse with the matter of the moral and ethical rights of privacy and personal identification indicators. Rawls lists three indicators to describe his image of a well-ordered society: First, public acceptance and agreement with the principles of the political conception of justice. Second, evidence and acceptance of effective regulation. And, third, and, citizens' recognition of the principles of justice, and act accordingly to accept their duties and obligations. (TJ, 1981, 463-456)

### **1.3 The Role of Philosophers in Policy-Making**

Throughout the last century the claims of the scholars representing the philosophical side of the debate on the impacts of technology and biometrics have focussed on the themes of privacy, ethics, morals and human dignity associated with recording, transmittal, and storage of personal information.

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<sup>6</sup> See Miller (1971, 210-238), Chapter VI "A Quest for a New Legal Framework," in *The Assault on Privacy: Computers, Databanks, and Dossiers*. Ann Arbor: University of Michigan Press.

The literature is expansive. Included as examples are, *The Assault on Privacy* (Miller); *Visions of Privacy Policy Choices for the Digital Age* (Bennett and Grant); *Philosophical Dimension of Privacy* (Schoeman); and, *Human Dignity* (Kateb) and others noted and cited throughout the thesis and identified in the Bibliography.

The challenge offered by the literature research identification, analysis, and findings is to search for the missing link between realpolitik of public policy and the inclusion of philosophy represented by moral, ethics, and human dignity. From the 1890 *Harvard Law Review* article ‘The Right to Privacy’ by Samuel Warren and Louis Brandeis “ to Jonathan Wolff’s 2011 book, *Ethics and Public Policy: A Philosophical Inquiry*, the themes are consistent with the criticism that privacy and use of personal identification responds to technology in the absence of a legal, moral or ethical foundational support structure. The advances in technology at whatever level within society have moved forward without the influence or impact of philosophical considerations. At the same time, scholars- and to be fair- some policy makers, also raised the need to include philosophy alongside public policy considerations without apparent success as the issue remains unresolved and scholars continue to seek avenues to engage a debate.

#### **1.4 Initial Privacy Indicators circa 1890**

Evidence of an appropriate starting point to support the historic development of the concerns over personal privacy, recording and distribution is contained in an 1890 *Harvard Law Review* by Warren and Brandeis, two young lawyers. Brandeis would later become a justice of the Supreme Court of the United States. The article warns that innovations such as the photograph and mass-circulation newspapers threaten personal privacy. As a starting point on

the continuum of the philosophical arguments on privacy during the century it is useful to quote their observations in the article ‘Right to Privacy’. (Warren and Brandeis, 1890) “Instantaneous photographs and the newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’” (Warren and Brandeis, 1890) At the time Warren and Brandeis argued that the common law gives individuals the right to determine the extent that “thoughts, sentiments, and emotions” could be communicated to others. It is important to cite that (Miller, 1971, 38) and (Walters, 2011, 158) each recognized Warren and Brandeis for their contributions to the principles of individual privacy and public disclosure.

### **1.5 Personal Identity Privacy or “Records Prison”**

Arthur Miller’s 1971 essay, *The Assault on Privacy: Computers, Data Banks, and Dossiers*, provides an ideal bridge to the philosophical considerations within this paper. Miller writes about the developments of computer systems to store personal data. While Miller’s comments reflect the advancements of computers at the time, his thoughts resonate with provocative opportunities for reflection on current questions of privacy and personal identity forty-five years later. Little has changed between the years preceding and following his book. Miller is “apprehensive over the computer’s threat to personal privacy” as one considers “the possibility of using the new technology to further various private and governmental surveillance activities.” (Miller, 1971, 8)

Miller is writing at the same time as Rawls is examining his philosophical approaches to justice and fairness. Miller introduces two key terms, “records prison”, whereby continuous accumulation of personal information from “womb-to-tomb” creates a dossier through the use of the computer’s storage and retrieval capacity. (Miller, 39) The “womb-to-tomb dossier” concept acknowledged by Miller in a footnote was first introduced by H.I. Romnes, in an article in *Business Automation* (1966) titled ‘Managing the Information Revolution.’ Romnes suggests the possibility of constructing a sophisticated data centre capable of generating a dossier on every individual and transmitting it to a wide range of data users over a national network which he calls “one of the most disturbing threats of the cybernetic revolution.” (Romnes, 31)

Further evidence of the ongoing debate on computers, technology and privacy, albeit in the absence of biometrics at the time, is the work of Janlori Goldman.<sup>7</sup> She revisits and reflects on Miller’s work 30 years later in 1999 and writes “the ‘womb-to-tomb dossier’ that Harvard Professor Arthur Miller warned of thirty years ago may now be real. (Goldman, 98) In dealing with privacy, democracy, and individuality Goldman writes that, “The difficulty in defining privacy and its underlying principles has stymied and paralyzed policy makers and philosophers. Yet defining privacy and its values to individuals and society is essential if we are to develop cohesive and rational information privacy policies.” (Goldman, 101)

While Goldman’s paper, ‘Privacy and Individual Empowerment in the Interactive Age,’ provides only a cursory reflection on the technology and science of biometrics from handprints and fingerprints, through iris and odour scans, to the advent of mind-reading, the one consistent

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<sup>7</sup> In 1994, Ms. Goldman co-founded the Center for Democracy & Technology. From 1986 to 1994, Ms. Goldman was the staff attorney and Director of the Privacy and Technology Project of the American Civil Liberties Union. While at the ACLU, Ms. Goldman led the effort to enact the Video Privacy Protection Act, and led initiatives to protect health, credit and financial information and personal information held by the government.

problem is the unresolved question of the interconnectivity of individual privacy, personal identification and rights.

The literature review provides the evidence to support the claims that there is a gap between philosophy and political science. The review shows public policy issues dealing with privacy and personal identification has a weak and somewhat non-existent philosophical foundation.

Our review of the literature has revealed three key relevant trends. The first (1) is the 125 year scan of literature based on the question of the gap between philosophy and political science, which while identified, remains largely unresolved. The second (2) is reflection on recent and current national and international literature dealing with privacy, identity, and the use of biometrics to capture, record, store, and distribute data. The third (3) and arguably the key area considers the works of Rawls as an opportunity to bridge the gap with his theories, principles, and rules.

Questions and debates about personal identity and privacy protection associated with the emergence of increased computer technology and capacity begins to emerge during the early 1970's. Arthur Miller's book, *The Assault on Privacy: Computers, Databanks, and Dossiers*, not only debates the developing concerns, but also presents an uncanny ability to project his ideas into the future. Miller's work may still inject ethical and moral thoughts into the control of personal identification.<sup>8</sup>

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<sup>8</sup> It is noteworthy that Miller is writing at the same time as *A Theory of Justice* is published; however, there is no interchange of references in the two works.

Miller writes that “snooping” was the prime method of gathering personal identity information through the human eye, voice, and memory “before mass circulation newspapers, radio, telephones, television and computers.” (Miller, 1971, 170) Miller claims that the computer versus privacy questions first were identified and argued during what he calls “the Great Debate in 1967 over the proposed National Data Centre.” (Miller, x) He identified the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, Government Dossier, 90<sup>th</sup> Cong., 1<sup>st</sup> Session, as the point of departure. Furthermore, Miller extends his concerns that the increase in technology is a “threat to personal privacy.” (Miller, 1971, x) In view of the present debates and evidence Miller claims that as the public becomes more aware of the amount of personal data that is stored and remains on the record, “it is understandable that people may begin to doubt whether they have any meaningful existence or identity apart from their profile stored in the electronic catacombs of a ‘master’ computer.” (Miller, 49)

Miller was already thinking about the advent of what today is called “mind-reading”, although the technology and terminology would not be forthcoming for several more decades. Miller writes, “The ultimate step in mechanical snooping may be the implantation of sensing devices in the human body. These devices might be able to transmit data relating to physiological and chemical changes resulting from various bodily processes to a computer that is programmed to record the data. (Miller, 45)

Miller comes directly to the point which provides further evidence of the polemic within his work. “The challenge of preserving the individual’s right of privacy in an increasingly technocratic society, even one with a democratic heritage as rich as ours, is formidable.” (Miller, 210) Thus, the task of formulating an overall scheme for protecting privacy logically must begin

with an attempt to refurbish the current patchwork of common-law remedies, constitutional principles, statutes, and administrative regulation. (Miller, 210) Miller is also fearful of his own legal profession and the law in general, which he describes as “being somewhat laggard in coming to grips with the broader ramifications of the computer.” (Miller, 259)

As with other writers, Miller assumes that opportunities will be missed to include ethics and morals within the structure of the fast-paced technological advancements of the computer. “There will be no one to blame but ourselves if we then discover that the mantle of policy-making is being worn by those who have found the time to master the machine and have put it to use for their own purposes.” (Miller, 260)

Albert Jonsen and Lewis Butler wrote a 1975 paper for The Hasting Centre with the applicable title “Public Ethics and Policy Making”. Analysis of their paper reveals that the problem between ethicists and policy makers is communications. The use of vocabularies inhibits “understanding the conceptual and practical relationship between ethical positions and policy positions.” (Jonsen and Butler, 1971, 20)

The specific Canadian application of biometrics described earlier indicates that ethics was not part of the discussion. The absence of ethics with the public policy debate should come as no surprise according to Jonsen and Butler. As with Miller, they come directly to the essence of what they claim is the barrier. They present the argument that discussion of ethics is avoided by the politicians, bureaucrats and technicians who apply public administration models to develop policies, practices and procedures. Stated simply, “The philosophers’ academic style seems out of place in their world of constituencies, interest groups, power blocs, insistent demand, and limited resources.” (Jonsen and Miller, 19) Policy analysis is defined as an

interaction confined to the “economic, legal, cultural, social, and technical facts prevailing at the time and anticipated in the future.” (Jonsen and Miller, 20)

Neither Miller nor Jonsen and Butler refer to Rawls in their work. Moreover, Jonsen and Butler make no citation reference to Miller, which may indicate an initial and somewhat narrow focus on the topic. There is a disconnect in the community. This limiting of focus and collegiality among the scholars remains today. The research continues to show little evidence of ways to bridge the gap between philosophy and public policy.

Jonsen and Butler succinctly identify four problems that encompass the relationship between public administrators and ethicists. These relationship indicators can be brought forward and reintroduced as part of the approach to understand why the gap continues to exist and how new alignments can be created and presented for consideration and debate. They describe four problems contributing to the gap in the relationship between philosophers and policy-makers. (Jonsen and Butler, 20) They are (1) the language of ethics as the vocabulary render them suspect as “ethicists employ a technical vocabulary containing such words as deontological and non-natural properties”. (2) most people think of ethics primarily in terms of personal behaviour; (3) ethicists have no constituencies – ethics is easily subordinated to the exigencies of politics in a pluralistic society; and, (4) policy makers seeks experts to assist with analysis of economic or sociological problems to help make policy decisions. They conclude: “There appears to be no room for ethical experts.” (Jonsen and Butler, 20)

They identify three tasks to overcome the style and content of public ethics, which they describe as ‘somewhat vague’. (Jonsen and Butler, 22) These tasks involve (1) articulation of relevant moral principles in the policy problem; (2) elucidation of proposed policy options in light of relevant moral principles; and, (3) displaying ranked order of moral options for policy choice.

Joseph Monti continues the quest for alignment of ethics and public policy in his 1982 book, *Ethics and Public Policy: The Conditions of Public Moral Discourse*. He writes about what he terms the absence of ethics and morals from public policy. Monti continues the argument from the previous decades with further reinforcement that “the present public policy malaise indicates a crisis in what we have assumed to be our ability to act together on public questions. Such a crisis cannot adequately be managed only by tinkering with arguments or tightening logical bolts. We are not going to begin interrelating ethics and public policy satisfactorily by only analyzing more practical cases or creating courses that attend to an ever expanding laundry list of public moral problems.” (Monti, 1982, 93)

Monti calls for revisiting the meaning of ethics in terms of public science and the need to recapture “the central role of ethics in the policy-making process.” (Monti, 23) He claims that a resolution of the problem requires “a new attention to the foundation of the discipline itself – a new look at what are in fact the public and dialogic conditions for moral understanding, moral judgment, and ethical knowledge.” (Monti, 23)

## 1.6 Contemporary Scholars Continue the Disconnect Debate

Jonathan Wolff in his 2001 work, *“Ethics and Public Policy: A Philosophical Inquiry,”* reinforces the findings and approaches already cited and revisits the gap issue between philosophy and public policy. He continues the debate and adds additional contemporary arguments to support the inability of philosophical approaches to ethics and morals to align with public policy. Wolff offers what he describes as “the way to approach a moral problem that arises in the context of public policy is to formulate the correct moral theory, show how it would resolve the policy issue under consideration, and then argue for it, hoping to convince policy makers of the correctness of one’s moral theory and its resolution of the policy difficulty.” (Wolff, 2011, 4) He readily admits that while the contributions are important, “typically they will not take the debate very far.” (Wolff, 4) His argument continues into the area of public policy where he claims that there is little space for agreeing to disagree, where there is bias towards the status quo, and when the burden of argument for change is higher than for reflective or unreflective continuation of current policy.

Whether a moral view is correct, or right, or persuasive, takes second place to whether it is widely shared, or at least widely accepted in the sense of enough people being prepared to live with it. Wolff claims that philosophy and public policy have different standards to support their separate arguments, with inconsistency identified as the “philosophers favourite weapon”, while public policy framers look to resolution “through compromises between competing interests, and different laws made by different people, at different times for different purposes.” (Wolff, 82) This concept is also considered by Rawls’s views on “reflective equilibrium” and “overlapping consensus” which for Rawls combine to support his idea of “a fair system of social co-operation”

and the “idea of public justification.” (*Justice as Fairness*, 2001, 26; hereafter, cited as JF) We will see below how Wolff’s ideas of compromise and Rawls’s “reasonable pluralism” are reflected in the technical aspects of biometric policy-making but absent from a philosophical debate.

Wolff’s claims about the lack of philosophical connection with direct emphasis on ethics, combined with the earlier writers, provide the ideal opportunity to consider the ideas of other contemporary scholars. More contemporary scholars introduce more specific concerns about privacy, personal identity and moral and ethical considerations of technology and the use of biometrics.

### **1.7 International Commentaries: Ethics of Biometrics**

In this section, we shall see that the review and examination of international reports, all of which identify the lack of references to human rights and individual personal freedoms of choice when dealing with the policy policies requiring personal biometric information, mirror the findings of our literature review in the preceding sections.

A review of the literature based on several international viewpoints is consistent in identifying the need for human rights and ethical support structures as part of the public and private sector utilization of biometrics. Evidence of public policy ethics and values within the context of biometric applications is absent. The problem now is overtaken by issues of the advances in technology and the resulting new and diverse applications of biometrics as a means to confirm personal identification.

During the past decade authors have questioned the advancement of biometrics applications with cautionary notes about the need for ethics largely involving privacy issues. A broad cross section of such viewpoints include the Australian Federal Privacy Commissioner speaking in 2002, “agencies and organizations must consider, from the outset, the privacy risks that a proposed use of biometrics will pose and what privacy-enhancing options there might be.” (Malcolm Crompton paper, Biometrics Conference, Sydney, 20 March 2002, 22)<sup>9</sup>

Anton Alterman writes that, “Biometric identification raises a number of ethical issues, mostly concerning the concept of privacy.”(Alterman, 140)<sup>10</sup> He further suggests, “One cannot safely assume that the technological limitations of biometric protect our privacy today, and it is fairly certain that they will do less and less as time goes on.” (Alterman, 141) Alterman looks ahead and suggests that the future “could include having serial numbers implanted in our scalps.” (Alterman, 149) Alterman reflects the comments of other scholars found in the literature review, namely, that implants for identification is “an indication of the ethical challenges that digital technology has set before us.” (Alterman, 149) Alterman concludes that, “the perception that biometric identification systems are a reasonable trade-off of privacy for security will tend to make them appear acceptable even when the tradeoffs are less clearly to our advantage.” (Alterman, 149)

Jeremy Wickins, Department of Law, Sheffield Institute of Biotechnological Law and Ethics, published a paper in 2007 paper entitled, “The ethics of biometrics: the risk of social

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<sup>9</sup> Paper presented by Malcolm Crompton, Federal Privacy Commissioner, ‘Biometrics and Privacy the End of the World as We Know It or the White Knight of Privacy? Biometrics – Security and Authentication Biometrics Institute Conference, Sydney. March 20, 2002.

<sup>10</sup> See Anton Alterman, ‘A piece of yourself: Ethical Issues in biometric identification’, *Ethics and Information Technology* 5: 139-150, 2003. It is noteworthy that the article Alterman’s article was published in 2003 during the time of the Canadian focus on biometrics and identity cards.

exclusion from the widespread use of electronic identification”. Herein he develops the argument that biometrics can result in a form of social exclusion, which he says is “unethical as it unfairly discriminates against individuals or classes of people.” (Wickins, 45) Furthermore, he concludes that “the field of biometrics is a branch of biotechnology, and the ethics of its use should be scrutinised closely.”<sup>11</sup>

Karsten Weber in a paper delivered at a workshop on privacy held at the Centre for Interdisciplinary Research, University of Bielefeld, Germany in 2006, said there is a need to solve “important moral and social problems that could and certainly will arise by the use”. Annemarie Sprokkereef’s and Paul de Hert’s paper, “Ethical practice in the use of biometric identifiers within the EU,” reinforces the absence of ethical policies to support the use of biometrics. As with other published articles during the past decade the paper raises important questions, but leaves a void in providing philosophical answers. For example, they write that a “range of complex and interconnected issues must be addressed in decisions about the use of biometric technology.” (Weber, 78) At the same time, they conclude that “mapping the ethical and governance aspects of biometrics, however, is an important task which must underpin the public and democratic deliberations needed to create and sustain public support for this technology.” (Weber, 192)

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<sup>11</sup> Wickins notes that a second article will deal with the results of the research, although a search for the second article as part of the literature review was unsuccessful. An email to Wickins during the preparation of the research notes and confirmation of authors’ footnotes and citations prompted this response. “Thanks for making the effort to get in touch. The bad news is that the anticipated second article never got past the early draft stage - I had to abandon my PhD due to a protracted period of ill-health”. (Personal email correspondence September 12, 2014.)

The evidence presented in this thesis demonstrates the absence of references to ethical structures to support the advancements of biometric for personal identification. Literature questions the increasing use of the applications of biometrics, while at the same time advancing the need for answers to respond to philosophical questions of personal identification from the viewpoints of fundamental human rights, morals, and ethics. Accordingly, there is a need to turn away from the public policy issues of biometric applications to consider what lessons can be garnered from the thoughts through the writings of twentieth century philosophers.

The expansion of biometrics during the past decade represents a new and somewhat uncharted area of public policy. There is a need to reflect on Philip Agre's comments in *Beyond the Mirror World* (1998); Agre's thesis is that privacy problems have arisen through the application of industrial methods to a nonindustrial sphere of life. (Agre, 57) In supporting his claim he argues that "normative relations of representation and control are different." (Agre, 57) Domestic biometric policies have been overtaken by new technologies, emerging global issues, and initiatives seeking to confirm personal identity. Today, biometric information goes beyond uses for internal and external security, and also embraces international sharing of data information beyond the intended original intentions. Accordingly, there is a need to revisit the findings and include a public ethics lens as the use of biometrics for immigration matters is now largely global. Moreover, there is an absence of scholarly literature on the ethical implications in the use of fingerprints, iris, hand and face biometrics to confirm personal identification.

The absence of philosophical biometrics support structures is noted throughout the scholarly review work. Moreover, a 40-year-old journal article by Professors Jonsen and Butler, 'Public ethics and policy-making,' is revisited and their arguments are more reflective of the status today than when originally written. The core theme is that policy making avoids ethics!

An examination of public policies involving the application of biometrics as a means of personal identification by governments and private sector interests consistently shows the absence of moral or ethical reflection, including discussion of human rights, protection of individual privacy, and personal control whether volunteered or coerced. Additional support for the claim is found in the ideas of Professor Gregory J. Walters that, "Technology provides no ethical operating system for the deeper problems that plague communicative reason among individuals at this junction of human history." (Walters, 2001, 239)

Simon Davies in his chapter (in Bennett, 1999, 244-261) 'Spanners in the Works: How the Privacy Movement is Adapting to the Challenge of Big Brother' provides an ideal point for this paper to move forward to examine the case study involving public policy, a national identity card, biometrics, and the absence of a philosophical assessment of ethics and morals. Davies argues that privacy protection is largely based on "a set of technical rules governing the handing of data". And "a scan of privacy-related publications in two decades from 1970 indicates a steady decrease in polemical works and a corresponding increase in technical and legal works." (Bennett, 245)

Reflections on the extensive literature are constrained within the boundaries and limitations of the paper. The cited works are designed to provide formative overview to support two important claims. The first being the absence of philosophical thoughts and the second the

emerging concerns about the use of biometrics for personal identification. Responses to the lack of connectivity between ethics and values and public policy are developed further in the Rawls's chapter. Specific applications of biometrics follow in the next chapter offering a case study and support of the claim that ethical discussions are absent. Technical information, application opportunities, and relationships to safety and security along with protection from identity theft misuse are prominent throughout the debates.

## **2.0 Promoting a National Identity Card: 15 Years of Debate and Commentary**

This chapter examines and reflects on government actions and public discourse to prepare the foundation for a national identity card.

The single reference to ethics, which we have described as the genesis of this paper, is only as an editorial summary and last minute thought notation at the end of the official report and among the summary items. The reference is made within the following context, "other participants stated that there are a number issues relating to a national identity card that were not addressed at the Forum, including ethics." (*Biometrics Forum Report*, 43) While more than a decade has passed since Minister Coderre's announcement with the statement that "the biometrics train has left the station," (*Biometrics Forum Report*, 11) there has been an undercurrent of forward movement towards the ultimate introduction of a national identity card. Accordingly, it is important from an ethical and moral viewpoint to revisit and reflect on the initial starting point in 2003, and to apply these Canadian examples of public policy thinking about the use of biometrics as a personal identification system, and examine the evidence revealing an absence of ethical considerations within these supporting frameworks.

The case studies are presented as an indicator to map the initial start of the policy and to provide historic and useful reference points for further consideration and debate. Reconstruction of the significant preparatory work serves as a baseline, with reflective analysis and commentary. The case development is designed to reflect four principal overlapping activities along with cited references as historic milestones that provide key discussion points and supporting background documents, summary reports, minutes and media releases. The examination, based on publically accessible documentation, shows only evidence of a single use of the word ethics, and only limited references to morals, human rights and personal dignity. The outstanding question is this: Why the absence of ethical reference points and what best approach provides a reasonable response?

At a politically and publically acceptable future point, depending on national and international protection of safety and security concerns of the day, Canadians can expect to join with other countries that mandate and issue identity cards. Biometrics will play a leading role in the confirmation of individuals required to carry identity cards. During the span of the past 15 years the government has set in motion the principles of an identity card supported by safety and security reasons. At present, the supporting laws, regulations, policies, procedures and administrative requirements are arguably on hold in a file cabinet.

Continual references are made to safety and security benefits from using biometrics to confirm personal identification and to track one's whereabouts through data storage and sharing. Rawls helps to reflect on the emphasis on safety and security and the supporting messages developed and reinforced by government. He writes: "What the Sovereign does is not to reform

human beings, or alter their character, but to change the background conditions against which they reason.” (Rawls in Freeman ed., 78) Rawls’s thought in writing about the role and powers of the Sovereign aligns with the references to safety and security starting with the 2003 *Biometrics Forum Background Paper*, *Biometrics Forum Report*, Parliamentary Standing Committee, and subsequent references. Minister Coderre’s media release October 3, 2003: “Post 9-11 security has taken on a much greater importance for all nations.” (CIC media release October 3, 2003). First four words of the introduction of the Forum Background Paper: “Recent international security concerns.” (Forum Background Paper, 1) Minister’s opening remarks included the need to “protect against terrorism and identity theft.” (*Biometrics Forum Report*, 11) The House Committee wrote: “The purpose of introducing a national identity card is to combat terrorism or otherwise enhance our national security.” (Standing Committee Report October, 2003, 9) We now move forward to 2006 when Stockwell Day, the new Minister of Public Safety was quoted in a Canadian Press story: “Sooner or later, Canadians will have to carry some form of identification other than a passport to travel outside the country.” The security theme was reinforced by the Minister: “We want to be able to stop people who are a menace or a threat.” (Canadian Press, ‘National ID card back on the agenda’, Wednesday, February 22, 2006) Former Minister Coderre, an opposition MP in 2006 provided an update in the Canadian Press interview:

“Former Liberal Immigration minister Denis Coderre has always supported a card to identify Canadians, over and above the passport. Coderre said this week that it’s only a matter of time before the countries follow Britain and that Canada should act to ensure control over data. We have to have a real debate on this. We cannot bury our heads in the sand anymore. Something is going on worldwide and we have to have the debate. Three

years ago we were in the avant-garde, but right now we are trailing.” (Canadian Press, February 22, 2006)

While the thesis is focussed on the Canadian application of biometrics it is worthwhile to note the opening Executive Overview of the 2011 report by the U.S. National Science and Technology Council Subcommittee on Biometrics and Identity Management:

America’s national security community uses biometrics to resolve and then anchor the identity of known and suspected terrorists by linking information independently collected and maintained by the military, State Department Consular Affairs, Homeland Security’s Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), state and local law enforcement, the Federal Bureau of Investigation (FBI) and other less widely known participants.” (U.S. National Science and Technology Council, Washington, September 2011, 3)

We now move forward to 2012 to show the consistent government messaging in this example by Citizenship and Immigration Minister Jason Kenny. “Biometrics will strengthen and modernize Canada’s immigration system. Our doors are open to legitimate travellers, and, through the use of biometrics, we will also be able to protect the safety and security of Canadians.” (Citizenship and Immigration Media Release, Ottawa, December 7, 2012)

The literature identified in the previous sections confirms the ongoing absence of philosophy within public administration. Accordingly, the opportunity to test the gap against actual cases will be presented in the form of the national identity card and visitor visa documentation as examples. The reflections and references within the context of the identity card

and related biometrics application are based largely on my direct experience. I attended and participated in the 2003 Forum sessions referenced in this section, at the invitation of the Ministry of Citizenship and Immigration, and several years later (January 2010 to October 2010), worked at Citizenship and Immigration as a senior business analyst and consultant with the Global Visa Biometrics Application Network Project.

The cases represent the emerging public policy by the Canadian government to use biometrics for personal identification and visitor visa documentation. The evolution of the policy spans a decade between 2003 and 2013. The sections in this chapter consider the cases through distinct but interrelated activities. The first (2.1) is a brief overview of the background paper; the second, (2.2) makes direct reference and provides commentary to the Citizenship and Immigration Forum; the third, (2.3) outlines a summary of the 2003 House of Commons Standing Committee on Citizenship and Immigration; the fourth, (2.4) demonstrates the introduction and current use of biometrics (fingerprints and facial scans) for visitors to Canada requiring Visas as an outcome of the policy discussions; and the fifth (2.5) examines the path towards a Canadian identity card.

The argument is made that the presentation of these cases, combined with reflective commentary, provide concrete evidence that ethical and moral discussions are absent from the awareness and outreach work obtained through debates and program development. The papers are: First a 2003 background paper, “Biometrics: Implications and Applications For Citizenship and Immigration,” prepared by the Public Policy Forum for the Citizenship and Immigration Forum, October 7 and 8, 2003 held in Ottawa. (Referred as *Forum Background Paper*) The second a report on the Forum with the title, *Biometrics: Implications and Applications for Citizenship and Immigration. (Biometrics Forum Report)* The third document is the 2002-2003

Interim Report *A National Identity Card for Canada?* and related transcripts from Standing Committee on Citizenship and Immigration. The fourth section introduces the use of biometrics for visitor visa applications (VACs) to Canada. The VAC program is largely related to the administrative and preparatory work conducted in 2003 and 2011 to introduce the program. Reference points are largely taken from ministry statements and the project documents prepared during 2010.

This chapter examines, analyzes, and develops a current case example within Canada and argues that evidence shows the absence of ethical and moral consideration through the development of the policies, programs, and initiatives by Citizenship and Immigration, sponsors of the policy and debate. The chapter is purposely situated between the historic and current literature review and our analysis of Rawls in Chapter Three. Rawls's philosophy develops the argument and provides the evidence that his work offers the theories and principles that may offer an appropriate and applicable framework of ethics, moral, and human dignity.

## **2.1 Background Paper – Citizenship and Immigration Biometrics Forum**

In 2003, the Citizenship and Immigration Minister first introduced the concept of an identity card at a two day forum to consider the implications and applications of biometrics to confirm the identity of Canadians and visitors requiring visas. The Minister's announcement was reinforced by a government standing committee also called to consider and debate biometrics and a Canadian identity card.

Representation of the key points resulting from the presentations and reading of the detailed documents fails to show evidence of ethical and moral considerations.

A substantive background paper was prepared by the Public Policy Forum prior to the Citizenship and Immigration Forum in October 2003. The Public Policy Forum is described as an independent, non-profit organization established in 1987. The group provides services as a facilitator to encourage debate on government policies. Preparation and distribution of the paper was intended to offer the Forum participants and the public a “general overview of the key issues related to biometrics in the context of citizenship and immigration policy” and “to aid discussion.” (*Forum Background Paper*, 1)

Examination of the twenty-eight page document provides background information on the levels of Canadian identity documents, includes the often described “tomb-stone”<sup>12</sup> requirements of birth and death certificates issued by provincial governments, status cards and immigration and citizenship records within the jurisdiction and as managed by the federal government. These paper-based documents are used to confirm identification for access to Social Insurance Numbers (SIN), passports, licenses and citizenship cards.

Direct and also subtle references, even on the first page of the background paper, lead the reader towards the central theme. To build the public policy case for further discussion of a national identity card for Canadians. For example, approximately 100 countries issue a voluntary or mandatory national identity document. The paper notes, “Canada does not have an explicit identity policy or a national identity card.” (*Biometrics Forum Report*, 1) Moreover, the background paper provides an overview of the applications for identification and verification through biometric characteristics such as fingerprints, facial scans, of through iris and retina images. Verification through behavioural characteristics including signatures, keystroke

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<sup>12</sup> This is a generic term used to describe basic information about an individual including, birth, marriage, death and at times address.

impressions, and speech patterns are also identified as indicators based on technology advances that are available.

Furthermore, the paper sheds some light on the potential issue of the need to balance security with public values. It is noteworthy that the use of the thoughts expressed by the authors, along with key words and phrases, indicated recognition of philosophical discourse, but there is no evidence that the arguments, claims, and evidence were acknowledged or carried forward. The approach to introducing philosophical thoughts in the background paper was never acknowledged or cited in subsequent discussions or documents available for review in this paper. The thoughts remain only as a passing text with the ideas parked.

It is important to identify, examine, and parse the “philosophical” section within the paper to note the work for reference for a time, like today, when the identity card issue re-emerges on the political agenda. The section, “Balancing security, privacy and civil liberties,” asks: “What are the public values that should underpin decisions about the use of biometrics in citizenship and immigration identity documentation?” (*Forum Background Paper*, 14)

It would appear that the authors of the research paper-- David Brown, Director of Special Projects and Rachelle Cloutier, Research Associate-- use their interest in philosophy when they incorporate two leading questions in the section. “What are the public values that should underpin decisions about the use of biometrics”? “Is the relationship among the values a zero-sum game? Is an increase in privacy protection necessary at the expense of security?” (Forum, 14)

Closely related to the questions about the privacy implications of biometrics technologies is concern about its potential impact on civil liberties. Some scholars argue that in the information age, the private spaces in which individuals can act free of interference or surveillance within the limits of the law, are being inappropriately invaded by the State's power over the individuals. (*Forum Background Paper*, 15)

There is also reference to the concept of "exclusion", not unlike Wickins' work referenced earlier and his argument towards "social exclusion". The background paper raises the question of whether the introduction and application of biometrics for personal identification will result in "a permanent underclass of citizens who do not have access to biometric cards, either because of physical or financial limitations, or religious beliefs." (*Biometrics Forum Report*, 5) Moreover, the authors state:

"A system using biometrics technology – especially a universal system – would be more transparent and egalitarian. Since everyone's rights would be diminished a fraction, but no one's rights would be diminished disproportionately." (*Biometrics Forum Report*, 16)

The Forum paper concludes: "The use of biometrics technology raises critical questions related to public security, the protection of individual privacy, and the preservation of Canadian values and civil liberties. It is a difficult balance between personal and social needs and the interests for which there is no simple solution." (*Biometrics Forum Report*, 23)

Acceptance of biometrics for purposes of personal identification is considered a routine and arguably a requirement of enhanced security and safety, along with the perils of fraud through identity theft based on the government policy papers and media stories. This public acknowledgement through incremental requirements of facial, iris and fingerprints for passports,

licences, and travel documents, has gradually been accepted without any debate on the ethical, moral, and human dignity considerations. Governments, through operational and technical advancements, have paved the way for the introduction of a Canadian identity card. Initially, the concept of the identity card was to serve as a viable replacement for a series of government issued identity cards starting with the Social Insurance Card (SIN).

The Forum background paper was distributed in advance as part of the preparation for the two-day Forum sessions, and yet, there is little direct evidence that Forum paper was incorporated into the discussions Forum conference discussions that followed. The word ‘ethics’ did not appear in the background paper.

## **2.2 Biometrics: Implications and Applications – Biometrics Forum Report**

Citizenship and Immigration Minister Denis Coderre extended invitations on behalf of the Department of Citizenship and Immigration Canada to a list of 100 individuals to participate in a two day Forum (October 7 and 8, 2003) to discuss biometrics and the idea of a national identity card.<sup>13</sup> Forum participants were chosen to “provide a wide range of positions and options on identity, privacy and related issues.” (Biometrics Forum Report, 3) According to the Minister’s media release, “the objectives were to explore the technology of biometrics to meet future policy objectives; enhance and expand discussion on technical and social issues; discuss a

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<sup>13</sup> Among the speakers at the Forum were Professor Alan M. Dershowitz, Professor of Law, Harvard Law School; Dr. Colin Soutar, Chief Technology Advisor, Canadian Advanced Technology Association, Biometrics Group; Frank Graves, President, EKOS Research Inc.; Jennifer Stoddart, Quebec Privacy Commissioner; and Stephanie Perrin, President, Digital Discretion Company Inc. Details of their technical presentations and arguments and claims, available in the summary report, focused on opportunities to move the biometrics program forward. For purposes of this thesis the examination and analysis was directed toward the search for evidence, to indicate references to ethical and moral ideas, which were found to be absent.

national security card; and, examine issues prior to policy implementation.” (CIC News Release, Ottawa, October 3, 2003)<sup>14</sup>

Minister Coderre reinforced the guiding principle of the two days that “the biometrics train has left the station.” (*Biometrics Forum Report*, 11) The minister stressed his view that Canadians move beyond thinking about technical issues to discussions about policies required to implement a national identity card. Moreover, he said: “The issues of a national identity card needs to be discussed in living rooms across the nation.” Furthermore, he indicated that the biometric identifiers were not only “for landed immigrants and permanent residents but rather for all Canadians.” (*Biometrics Forum Report*, 37)

At the time of the conference, I was personally engaged in the examination of the impact of identity theft, safety and security issues, as well as some limited concerns about data storage it’s sharing among national and international agencies. Moreover, the questions of morals, ethics and human rights were not at the top of the agenda neither in their mind nor on the table for discussion. At one point during a session with Minister Coderre, discussions centred on the technical feasibilities of biometrics for cross-border and visitor visa requirements.

Citizenship and Immigration Canada (CIC) was actively working to develop strategies and policies on document integrity in a citizenship and immigration context. The Forum was to assist with the review by the Standing Committee on Citizenship and Immigration. Key to the Committee meetings was the examination of a national identity card. The plan was for CIC to assist with policy development of identity documents in Canada. The department was taking a

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<sup>14</sup> The archived news release is available at <http://news.gc.ca/web/article> and is identified as ‘Minister Announces Forum on Document Integrity and Biometrics’.

lead to document integrity to confirm identity or status. At the time, more than two million documents were issued each year to immigrants, foreign students, visitors and temporary workers to Canada.

Although there are numerous current examples of the increasing interests and use of biometrics, our focus remains on two Canadian examples of the identity card and visitor visa documents. The examples, albeit separated by a decade, demonstrate public policy thoughts about the use of biometrics as a personal identification system, while at the same time helping to confirm further the idea of the gap between philosophy and public policy through the absence of ethical considerations.

While a plethora of public policy issues are raised throughout the report, there is only a single reference to ethics as among the issues “not addressed at the Forum.” (*Biometrics Forum Report*, 43) The public policy to create a biometric national identity card was subsequently “filed” for future review. The absence of the philosophical inclusion of ethics and morals throughout the Standing Committee year-long schedule of hearings, receipt of presentations, and travel abroad to multiple jurisdictions, described in the following section, also support the hypothesis argues in this thesis.

### **2.3 Canadian Government Review Committee**

Throughout the latter part of 2002, and during 2003, the Standing Committee on Citizenship and Immigration conducted a study of a national identity card for Canada. The initiating point was a November 2002 request to the Committee by Citizenship and Immigration Minister Coderre to initiate a comprehensive study on the “possibility of creating a national identity card.” (Committee Interim Report, 1) The Committee received witness information

from associations and individuals supported by visits to Washington, D.C., London, England, Berlin, Germany, Warsaw, Poland, Rome, Italy, Athens, Greece, and Madrid Spain. Twenty-eight separate briefs were also received.

Minister Coderre set the mandate of the Committee study with the objective “to engage Canadians in a full and informed discussion about the possibility of creating a national identity card.” (Committee Evidence Report, February 6, 2003) The Minister further suggested that the House of Commons Standing Committee on Citizenship and Immigration would be an appropriate forum for such a discussion and the Committee agreed to study this important question.

The Minister specifically asked the Committee to examine and report on a national identity card to include the technology of biometric identifiers such as the fingerprints, face or iris. The foundational argument was based on responses and challenges in a post 9-11 world. The objective was to address security and the needs, both nationally and internationally, for a secure proof of identification. In his opening statement to the Committee the Minister said:

“In the aftermath of the terrorist attacks in the United States on September 11, 2001, identity has taken a new prominence in countries around the world. Canada has been no different. Canadians have come to see the ability to establish identity as an important element of personal and collective security.” (Committee Evidence – line section 1110)<sup>15</sup>

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<sup>15</sup> 37<sup>th</sup> Parliament, 2<sup>nd</sup> Session. Standing Committee on Citizenship and Immigration –Evidence Contents, Thursday, February 6, 2003.

The Committee reported that a number of challenges were considered, including privacy, equity and other civil liberties, along with legal and governance issues. The Committee meeting information is detailed in the fifty-seven page report entitled “A National Identity Card for Canada?” Report of the Standing Committee on Citizenship and Immigration, October 2003. The essence of the report is framed in Minister Coderre’s statement to the committee in which his reasons are given for a national identity card with biometric data. He claimed that a biometric identity card would strengthen national security; prevent identity fraud; improve the integrity of Canadian travel documents; and introduce a national identification system to replace a divided system between the federal government and the provinces.

The Standing Committee’s mandate was based on national security concerns resulting from post-September 11, 2001 with the objective to consider a national identity card and related issues involving travel documents, commerce and identity theft. Minister Coderre told the Committee members in February 2003 that “a national ID card is simply a tool that permits the bearer to prove, with a high degree of certainty, that they are who they say they are.” (Standing Committee on Citizenship and Immigration – February 6, 2003 –line 1110)

The Committee issued a report in which it indicated that, “we have not, as a whole, made any final determinations. This report is intended to summarize what we have heard thus far and we reiterate that we are continuing our study. It is clear that this is a very significant policy Issue that could have wide implications for privacy, security and fiscal accountability.” (Report of the Standing Committee on Citizenship and Immigration, October 2003, 26)

Questions that the Committee identified for ongoing consultation were largely based on technical issues involving the amount of data stored, access to data and data corrections. Privacy protection measures combined with monitoring and enforcement represented a single reference point on the list. Robert Marleau, Interim Privacy Commissioner of Canada, addressing the Standing Committee on Citizenship and Immigration September 18, 2003, termed the privacy risks associated with a proposed identity card “substantial”. He went on to state in his presentation that “the challenges of putting in place a national ID system that is workable, affordable, and respectful of the privacy rights of Canadians are enormous.” (Submission of the Office of the Privacy Commissioner of Canada to the Standing Committee on Citizenship and Immigration September 18, 2003)<sup>16</sup>

Support documentation is extensive and an analysis of every factor exceeds the limitations of this paper. However, the documents were sourced and examined with the sole purpose to confirm or deny any presence of hint or references to ethics and morals. The information provides a public policy approach with an emphasis on administrative and bureaucratic direction of thought, arguments, claims, and evidence to support an identity card.

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<sup>16</sup> Robert Marleau, Interim Privacy Commission said: “The debate has to be about more than just cards. A national identification card would require an elaborate and complex national identity system, with a database, communication networks, and card readers, millions of identification cards, and policies and procedures to address a myriad of security, privacy, manageability, and human factor considerations.”

## **2.4 Implications and Implementation of Biometrics for Visitor Visa Applications**

There were direct and lasting outcomes resulting from the Forum Conference and Standing Committee Meeting during 2002 and 2003. These outcomes have evolved into the current use of a biometrics identity requirement for foreign visitor visa applications.<sup>17</sup> Thus, this is the second case example, actually implemented, while the introduction of an identity card program remains stalled.

The use of biometrics for visitor visa applicants was first discussed at the Forum conference in 2003 as an idea to replace the paper-based, cumbersome, and subject to abuse and fraud, visa application system with the use of biometrics. Today, a decade later, the visitor visa requirements are in place and one of the objectives of the 2003 Committee and Forum discussions. Subsequently the use of biometrics – finger prints and photos - of visa applicants is providing background information at border entry points and allows the exchange of data with major international countries for purposes of safety and security. A global network in the range of 80 Visa Application Centres (VACs) operate in more than 50 countries to handle up to 90 percent of the total volume for visitors and temporary residents to Canada. At the same time the use of biometrics as part of a national Canadian identity card program remains “parked” on a government public policy shelf, and is only subject to a program review and renewal when appropriate.

While the idea of a biometrics visitor visa requirement was first discussed in 2003 it was not taken seriously until the Temporary Resident Biometrics Project was announced in the

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<sup>17</sup> The Foreign Visitors Visa Application program requires visitors to Canada who have historically completed a form and at times a personal interview to obtain a visa to Canada are now required to provide fingerprints and a digital photo provided. The biometrics is obtained by visiting a Visa Application Centre (VAC).

Federal Budget in 2008, and in partnership with the Canada Border Services Agency and the Royal Canadian Mounted Police. The actual implementation started in 2013, when foreign nationals of designated countries seeking visas to enter Canada were required to give their fingerprints and have their photograph taken as part of their application. The initial list included 29 countries and one territory: Afghanistan, Albania, Algeria, Bangladesh, Burma (Myanmar), Cambodia, Colombia, Democratic Republic of Congo, Egypt, Eritrea, Haiti, Iran, Iraq, Jamaica, Jordan, Laos, Lebanon, Libya, Nigeria, Pakistan, Palestinian Authority, Saudi Arabia, Somalia, Sri Lanka, Sudan, South Sudan, Syria, Tunisia, Vietnam, and Yemen. The strategic objective, described by the department as an identity management tool, aligned Canada with other countries using, or preparing to use, biometrics in immigration and border management. The countries include the United States, the United Kingdom, Australia, and New Zealand, countries in the European Union Schengen Zone,<sup>18</sup> Japan, South Korea, the United Arab Emirates, Indonesia, Malaysia, and Saudi Arabia.

Canada is not alone in the biometric visitor visa program. Australia began collecting fingerprints and photographs in December 2010 for visa applications made in 15 countries, managed by 10 offices across Africa, Asia, Europe and the Middle East. With the exception of France, which had already implemented biometrics in its visa program, the European Union and Schengen Treaty countries began rolling out their biometric (fingerprint and digital photograph) visa program in October 2011. New Zealand is in the planning phase of its biometric visa program. Moreover, Canada is a member of the Five Country Conference (FCC) – with the U.S.,

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<sup>18</sup> The Schengen Area is the area comprising 26 European countries that have abolished passport and any other type of border control at their common borders, also referred to as internal borders. It mostly functions as a single country for international travel purposes, with a common visa policy. The Area is named after the Schengen Agreement. Countries in the Schengen Area have eliminated internal border controls with the other Schengen members, and strengthened external border controls with non-Schengen states. The Schengen area encourages the free movement of goods, information, money and people. <http://en.wikipedia.org/wiki/Schengen>.

the UK, Australia and New Zealand – which is focusing on biometrics as a key tool for reducing identity fraud and enhancing security. An FCC information sharing initiative was implemented in August 2009. The legislative authority now is provided through Canada’s new immigration Bill C-24, which allows cabinet to disclosure of information for the purposes of national security, the defense of Canada or the conduct of international affairs.<sup>19</sup> (Bill C-24)

There is no evidence of an ethical framework or analysis to indicate that matters of human rights, individual privacy, or personal acceptance were considered and currently are represented within the public policy. The one reference contained in a media release states “that Citizenship and Immigration Canada, along with its partners, the Canada Border Services Agency and the Royal Canadian Mounted Police, continue to work closely with the Office of the Privacy Commissioner to ensure adequate privacy protection measures for an applicant’s personal information. Applicants’ privacy will be protected in accordance with Canada’s *Privacy Act*.” (Citizenship and Immigration media release Ottawa, December 7, 2012)

In 2010 I was assigned to work on the Biometric Visitor Visa Application project at Citizenship and Immigration. My own experience with this project focussed on the administrative practices and procedures required to implement the program. There is a noticeable lack of reference to philosophical matters of ethics, morals and human dignity. As examples, the actions included to develop global strategy and a business model for Visa Application Centres

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<sup>19</sup> C-24 AN ACT TO AMEND THE CITIZENSHIP ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS  
Royal Assent(2014-06-19)

This enactment amends the *Citizenship Act* to, among other things, update eligibility requirements for Canadian citizenship, strengthen security and fraud provisions and amend provisions governing the processing of applications and the review of decisions.

(j) providing for the revocation of citizenship of dual citizens who, while they were Canadian citizens, engaged in certain actions contrary to the national interest of Canada, and permanently barring these individuals from reacquiring citizenship; and

(k) authorizing regulations to be made respecting the disclosure of information.

(VACs)<sup>20</sup> as a primary/mandatory point of service for biometric enrolment; plan implementation of a global VAC network outside of Canada; examine and evaluate opportunities of VAC sharing with other countries, confirm; VAC/commercial partner role in service delivery modernization; develop transition plans to bridge from the current VACs to the vision of the global VACs program; and, establish performance measures and reporting including service delivery, privacy, and Information Technology and Information Management. (Whitelaw- project working notes - 2012).

A Citizenship and Immigration Department press release, dated December 7, 2012, announced that “to facilitate legitimate travel, nationals of twenty-nine countries and one territory will soon need to provide their biometrics to come to Canada to visit, study or work, under regulations proposed by Citizenship, Immigration and Multiculturalism Minister Jason Kenney.” “Biometrics has proven to be one of the most effective ways to identify individuals entering the country,” said Minister Kenney. “By providing immigration officials with greater certainty, biometrics will facilitate legitimate travel to Canada.” (CIC Media Release – December 7, 2012)

The development and implementation planning for the visa application project involved a five-year series of milestones. Years one and two (2008-2009) as the initiation and planning phase; year three procurement; and, years four and five as the implementation period to reach full deployment in year six (2013-2014). The objective was to provide historic baseline information in order to evaluate progress, combined with a need for effective measurements to

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<sup>20</sup> A VAC is a specialized third-party service provider used to facilitate the submission of visa applications including biometrics. Source: Citizenship and Immigration Visa Application Centres Baseline and Metrics Report, April 2010, 16.

monitor change and report on progress and value for money inputs. As further evidence to support the claim of an absence of representation or consideration of the ethical implications, the project metrics for both quantitative and qualitative measurements included strategic objectives of Citizenship and Immigration Canada (CIC); the Service Innovation Office Division; and, the Visa Application Centre Branch; governance, service standards, capacity, information technology, risk identification, tracking, and mitigation, audits, compliance, value-for-money, outcomes, and privacy.

Here the reader will note how the qualitative measurements noted above open to the important role of philosophy and ethics. In the next chapter, we seek to determine the viability of Rawls's philosophical principles and rules for biometrics public policy in Canada.

## **2.5 Canadian Identity Card – The Next Steps**

While more than a decade has passed since Minister Coderre's announcement that "the biometrics train has left the station,"<sup>21</sup> there has been an undercurrent of forward movement towards the ultimate introduction of a national identity card. Accordingly, it is important from an ethical and moral viewpoint to revisit and reflect on the initial starting point in 2003, and use Canadian examples of public policy thinking about the use of biometrics as a personal identification system and examine for evidence of the absence of ethical considerations within these supporting frameworks.

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<sup>21</sup> Minister Coderre's opening remarks to the Biometrics: Implications and Applications Forum October 7 and 8, 2003. See *Biometrics Forum Report* page 11. (October 7 & 8, 2003)

Based on current activities involving security checks, passport controls along with denying, withholding and revoking the passport of individuals' rights to travel, it is reasonable to argue that a serious public debate about identity cards must be reinvigorated. The claim is even more pressing considering the current domestic and international concerns arising and with internal impacts within Canada.

In the 1990s, a proposal to replace the Social Insurance Number (SIN) with a national Identity card was examined by the House of Commons Standing Committee on Human Resources Development. The idea was rejected by the government due to privacy concerns and the projected cost. The Canadian government started to examine ways to replace the SIN as a unique personal identifier. Based on the discussions during the past decade, and the application of the biometrics for the visitor visa cards, it is only another step in the policy continuum to move to a national identity card. An isolated incident, or the threats of more robust security concerns from many groups, can provide the catalyst to introduce an identity card as the "softening" of public awareness and political debate has occurred and is documented.

Originally the SIN card was for employment, banking and taxation access to government support and benefit purposes. Soon thereafter, it was applied as a generic identifying number for a wide-range of purposes including ease of access and use for identity theft and fraudulent use. Today the SIN card is ubiquitous for personal identification but continues to be paper-based. Behind the scenes, the Canadian government is starting to study a national identity card program as an alternative to the use of the SIN. The initial discussions were somewhat fragmented as to the purpose, technical feasibility, support by Canadians (whether voluntary or mandatory), and the costs associated with step-up, maintenance, and security of information. These important

policy alternatives come at a point in time when debates about identity theft, personal privacy, and data sharing emerged on the national debate agenda.

The Biometrics Forum and House Standing Committee discussions in 2003 placed a priority on use of identity cards as part of a government strategy to reinforce border protection. One of the outcomes of the discussions was the need to revisit the identity card, first considered a decade earlier, and raised to the top of the “to do” list following September 11, 2001.

In her essay, “Using Biometrics to Revisualize the Canada-U.S Border,” Professor Shoshana Magnet (2009) offers a fact-based description of changes in public policy to strengthen the Canada-U.S border controls from the viewpoints of immigration and border security. The initiation and application of biometrics between Canada and the U.S. is identified as a new area of public policy. She notes: “The events of September 11, 2001, prompted a significant change in U.S. - Canada Border relations.” (Magnet in Kerr, Valerie Steeves, and Carole Lucock. eds., 2009, 361) “The relations shifted,” she writes, to highlight the danger to the United States of Canada’s “permissive” immigration and refugee policy. (Magnet, 361) The Canadian government was confronted with increased pressure from leaders of the United States, the United Kingdom, the European Union, Australia and New Zealand to increase the documentation of foreign visitor visa applicants through biometrics which would increase border security but allow for cross-border sharing of personal information.<sup>22</sup>

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<sup>22</sup> The international government requirements resulted in increased public-policy activity within Citizenship and Immigration Canada to apply biometrics (digital photographs and electronic finger prints) to the approval process. See *Biometrics Forum Report*, 13).

Biometrics for personal identification was fast-tracked as a result of the events of September 11, 2001 with the initial emphasis on the foreign visitor visa documents. Professor Magnet writes:

“Biometrics has risen to prominence in the post 9/11 spotlight. Biometric technologies have become an essential component of the identification and application of the U.S. - Canada border, represented as able to locate and enforce the border through the inspection and classification of individual bodies.” (Magnet, 366)

Her work ends with a “need for policies based on principles of inclusiveness and which facilitate substantive claims to equality at the U.S. - Canada border.” (Magnet, 376)

While Professor Magnet’s information establishes a point in time (mid-2000), the facts have been overtaken by new technology, emerging global issues and public policy to ensure border security and biometric identification of visitors to Canada and citizens of Canada. There is a need to revisit the findings and include a public ethics lens. Use of biometrics for immigration matters is now largely global. As Canada advances to apply biometrics for identification and shares the data internationally the actions are occurring in the absence of any reference framework to the ethical implications in the use of fingerprints, iris, and palm and face biometrics, and forthcoming advanced biometric technologies to confirm personal identification.

The difference between the traditional identification card (such as the SIN) and a proposed new national identity card comes down to technology. Today, several countries have instituted national identity cards that make use of biometrics – the scientific collection and analysis of biological data. Biometric data includes fingerprints, iris scans, and face scans –traits

that are unique to every individual. In addition, “smart cards” have a built-in microchip that can hold large amounts of data on individuals, including a signature and photograph.

As Canada continues to bolster national security post September 11, 2001, and consumer commerce becomes increasingly jeopardized by identity theft, a National Identity Card program is, I would argue, a foregone solution.

The question remains: Do Canadians need a new piece of identification? Several pieces of ID, including driver’s licenses, birth certificates, and passports are already carried in wallets and purses. Why add another new piece of ID? The answer from a public policy viewpoint is one of reliance currently on paper-based documentation. Biometrics technology offers a new level of confirmation of the individual’s identity beyond the limits paper documents –subject to identity theft, misuse, fraud, safety and security. The U.S. Federal Trade Commission issued an information awareness book in 2002 at the time Canada was examining biometrics. The book: *ID Theft: When Bad Things Happen to Your Good Name*<sup>23</sup> highlighted the problems resulting from paper-based personal information.

One is hard pressed throughout the documentation, reports, findings, recommendations, journal articles, and books to find references to ethics, morals, human rights, and philosophical analysis and arguments involving the use of biometrics for personal identity in general, and the introduction of an identity card specifically. There are repeated cautionary references to protection of the personal information collected as part of biometrics, but no obvious and emerging evidence of critical thoughts and assessments on the morals and ethics as a supporting

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<sup>23</sup> *ID Theft: When Bad Things Happen to Your Good Name*, Federal Trade Commission, September 2002.

basis to encourage reasoned and philosophical debate beyond the technical and operational imperatives of biometrics for personal identification.

Canada's more recent example involves the use of biometrics for visa applicants to this country. In 2012, Citizenship and Immigration introduced biometric digital fingerprints and digital facial photographs to support visa documents for visitors, students, temporary workers, and business applicants. Again, there is no evidence of an ethical framework or reference to indicate that matters of human rights, individual privacy, or personal acceptance were considered and are currently represented within the current public policy. Canada's involvement in developing and advancing visa biometrics was largely due to an accelerated catch-up process to align with other countries. During the 2000's, countries, excluding Canada, took positive action towards international use and sharing of biometrics as a personal identification tool. The current public policy announced in December 2012 to implement biometrics brings Canada in line with other countries including, the United States, Japan, United Kingdom, Australia, France, European Union and Schengen Treaty and New Zealand. Citizenship and Immigration Minister Jason Kenny in announcing the program said: "Biometrics will strengthen and modernize Canada's immigration system. Our doors are open to legitimate travelers and, through the use of biometrics, we will also be able to protect the safety and security of Canadians." (CIC Media Release, Ottawa, and December 7, 2012) Implementation of the foreign visitor visa application biometrics requirements was first introduced as a policy objective at the 2003 Biometrics Forum.

Bennett and Grant capture the essence of the personal information exchange platform that is affixed to the technical question but is directed towards a deeper form of thought. They consider personal information that is "dispensed and accessible from a multitude of remote

locations” and is collected, matched, traded, and profiled in routine engagement with both public and private institutions.” (Bennett and Grant, 3)

Minister Coderre described the practical benefits of a national identity card, but at the time provided little information about how a system would be put in place to support the policy. From a philosophical viewpoint the details of the implementation of an identity card based on a minimum of privacy implications at inclusion of ethics, morals, and human dignity is difficult to measure and assess. The discussion prompts several questions requiring a protection of privacy framework based on ethical considerations. For example, will the card be voluntary or mandatory? Will it be of the type of biometric needed to confirm identity, storage, and exchange of data? Moreover, there is a paramount question of “who” has the authority to request or require the showing of the identity card and for “what” purpose.

Based on the documented evidence at this point in time showing the absence of an ethical framework, I would claim that the examination and potential application of an identity card is a case in need of a process. Arguably the process can be augmented and strengthened with a bridge to the ethical and moral questions and respond to the initial question of the Forum noting that ethics was missing. As shown within the case studies, there is little if any evidence to demonstrate ethical and moral considerations. The absence of any philosophical framework weakens the opportunity to have any meaningful dialogue let alone a debate.

To provide the bridge to link and reconnect elements of philosophy to the public policy process for the use of biometrics for visitor visa documents and the claim that a biometric

identity card is forthcoming, it is important to consider, test, and apply the philosophy of Rawls in the next chapter.

### **3.0 Public Ethics, Policy-Making and Philosophy**

This chapter looks at the Canadian Identity Card proposal and analysis, and demonstrates in greater detail the absence of discussions on ethics. This is reinforced in a review of a 2011 biometrics report issued by the National Science and Technology Council (NSTC) Subcommittee on Biometrics and Identity Management, also demonstrating the absence of ethical and moral consideration. The emphasis of NSTC paper is focussed on advances in technology, safety, and security and is discussed in further detail towards the end of the chapter.

Numerous scholars have documented and assessed the extensive works of Rawls. Here we examine ideas, often hidden within the texts, which offer constructive insights and practical applications; we seek to provide response to the absence of philosophical thought in policy-making. Within Rawls there are helpful points of direction that can be extracted, considered and reformed into an instructive public policy framework that recognizes the philosophical and political science requirements. The literature review confirms the historic inability of philosophers and political scientists to communicate, and reflects on their thought processes and ideas, one largely abstract and the other practical. The biometrics identity card case missed an opportunity to consider ethics, and it is through Rawls that a case can be developed to align philosophy with political policy and administration.

An analysis and application of Rawls to test the usefulness of his work for biometric personal identification offers building blocks to overcome the divide. His thoughts, theories, principles, and rules serve as a pathway between philosophical ideals and the practicalities of

public policy. The testing of his work presents both a challenge and an opportunity to venture into somewhat uncharted territory of reason and argument. It is no easy task to delve deeply into more than fifty years of Rawls's work to extract ideas that have a reasonable opportunity for acceptance to join ethics and policy-making. The challenge arises to connect Rawls's thoughts with ideas that are supportive of biometric administrative policies, procedures and practices. This is particularly challenging when there is no apparent evidence that the task has previously been examined. This challenge is important to the thesis as it serves to bring a practical approach to the philosophical and ethical evaluation of biometrics. Therefore, I argue that Rawls's philosophy provides an ideal working framework to assure that ethical issues are considered within public-policy making. Moreover, the construction of a formative assessment of his thoughts helps to answer the initial question to identify the absence of ethics within discussions used to introduce and promote an identity card.

Rawls's theories and principles, supported by his lists of thought arguments, developed, adjusted and amended over time, are well known and respected within the community of philosophical scholars. However, there is no direct evidence based on our previous literature review, that his work has been assessed and realigned in terms of practical application. Other points to link Rawlsian philosophical thoughts and policy-making may well exist. In the meantime, the paper assumes the challenge to use Rawls's thoughts representing planks from which to construct a platform to serve as ethical and moral measurements.

Specifically, Rawls's ideas about ethics, supported by justice as fairness, human rights, dignity, social cooperation, and public reason and public justification, offer important reference points as the first steps towards building a framework for use in policy-making and with direct application to the question of biometrics and an identity card.

Rawls puts the burden of responsibility directly on the individuals who explore his work seeking answers to ethical and moral questions. From the initial engagement of task to discovery and applying ultimate plausible solutions, the challenge is to work through Rawls's design. Rawls set the bar extremely high, thereby intensifying the challenge for purposes of interpretation and application, for he writes that his role is to carry to "a higher order of abstraction the traditional theory of the social contract." (TJ, viii) The most difficult requirements within Rawls's works are to collect and assess all the information, and build on the ideas to determine some decisions that reflect back to the question of the inclusion of ethics. For Rawls, the success of his theory of justice is "how well it introduces order and system into our considered judgements over a wide range of questions." (TJ, ix) Before advancing the numerous twists and turns throughout Rawls's philosophy, and testing and developing his thought experiments in relation to biometrics,, it is important to establish a working methodology and perhaps more importantly a compass to maintain a focus.

A useful analogy to consider when interpreting Rawls for ethical questions in biometrics is to develop a form of "thought experiment," by using the standard precipitation experiment introduced in elementary chemistry classes. The experiment involves adding salt or sugar granules to a solution, generally water, whereby the particles are dissolved and yet remain suspended in the solution. A chemical reaction follows the addition of a single grain and the

reformed and larger particles fall to the bottom to form a pellet. It is through this analogy that Rawls is viewed.

First, there is the need to consider his contributions to political thought as well as the commentaries of his contemporaries and those who followed. The result is a list of Rawls's ethical principles and thoughts that are suspended until such time as ideas supporting a demonstrated utility to the core purpose of the paper and to examine an ethical formula for a biometric identity card.

The sections within this chapter are purposely designed and intended for two reasons. The first presents an understanding of the important principles, thoughts and rules identified by Rawls that have a direct relationship to the philosophical framework needed to bridge the gap between philosophical ethics with policy-making. The framework incorporates terms that would largely be understood and accepted as an addition to contemporary logic models used for policy development and implementation. Principal components of the standard logic models to measure effectiveness, efficiencies, and value-for-money are constructed on a series of steps. These include source, outputs, immediate outcomes, intermediate outcomes and long-term outcomes (now often referred to as an ultimate outcome). The second reason is for the chapter sub-headings to serve as a check-list for public administrators, political scientists, and policy-makers to apply whether considering biometric identification cards or any applications.

It is the case that Rawls's theory of justice and political liberalism does not address public administration and biometrics per se. Therefore, why defer to Rawls for guidance and a possible answer to the question?

### 3.1 Scholarly Reception of Rawls's Works

Only through a thorough understanding of Rawls's works, and enlightenment by other authors who analyse and cite his work, is there confirmation that his ideas are not only relevant, but also highly applicable to what public policy administrators like to refer to as 'logic models'. Catherine Audard, writes, Rawls "single-handedly reclaimed the field of political philosophy and social justice after decades of neglect." (Audard, 2) Rawls is identified as a "major thinker" who evokes "analysis of the relations between ethics and politics which did not exist before." (Audard, 1) For Rawls, the guiding aim, imparted in his opening chapter of *A Theory of Justice*, is to present a theory that "generalizes and carries to a higher level of abstraction the traditional conception of the social contract." (TJ, 3)

Answers will only come by delving into his thoughts and ideas to extract the key points that translate, without embellishment or misinterpretation, into the language of policy-making. Throughout the reading and assessment of Rawls's numerous works, from 1951 to 2001, there are sentence structures that force the mind to reflect on ways to incorporate ethics through his lens of philosophical thought experiments. For example, the 2003 identity card discussions noted in Chapter Two beg for discussion of the question of justice within the proposed policy. Deep within Rawls's *Theory of Justice* is his instructive thought that, "a law or policy is sufficiently just when favoured by most persons taking part." (TJ, 357) For Rawls, "legislative discussion must be conceived not as a contest between interests, but as an attempt to find the best policy as defined by the principles of justice." (TJ, 357)

For public administrators, Rawls presents a key challenge: To exercise the mind through his work and to elevate traditional social contract theory to a "higher order of abstraction" as he

indicates in the Preface to *A Theory of Justice*. Therefore, one might be dissuaded from the path to examine Rawls for *practical* public administrative approaches to discover a framework to responding to the initial question of bridging a gap. The result provides a philosophical cross over to include ethical and moral considerations within the isolated issue to incorporate biometrics in an identity card. Rawls makes no claim throughout his work of reference to either biometrics or identity cards, although philosophers and scholars contemporary to Rawls do provide commentary and analysis.

A rigorous reading of Rawls's philosophical and scholarly works provides important insights into his thought experiments, principles, theories, and rules. Rawls's "thoughts and rules" introduces a workable solution to respond to the absence of ethics and morals needed to reinforce and support the practical technical and public policy applications of biometrics as a unique personal identification and confirmation system. To apply Rawls's rules, I argue that his work must be read, examined, and contrasted with the maturation of his ideas as he seeks to modify and strengthen over time. Therefore, there is no single application that is seen within Rawls to answer the question; however, there are linkages of principles and rules that frame a logical and measureable model. It is by means of creating a Rawlsian philosophical framework that biometrics policies can be realistically assessed from the vantage point of ethics and morals.

Rawls repeatedly notes that the role of a political conception of justice is not to settle questions, but rather to provide a "framework of thought" to be applied to the question. (JF, 12) His model is based on three points; starting "with a rough idea, consider the questions and determine what is best and apply based on considered conviction and reflections." (JF, 2) In his section, 'The Basic Structure' in *Justice as Fairness: A Restatement*, he provides a quick but

effective high level check list. A decade ago delegates attending the Citizenship Biometrics Forum could have applied a restructuring of the Rawls's concepts. First, there is the use of biometrics for identity cards (rough idea); secondly, what are the ethical and moral questions (consider the questions 'philosophically'); and, thirdly, develop and incorporate into the biometrics policy a recognition of the ethical, moral, and human dignity responses (determine what is best and apply it based on considered convictions and reflections). The 'list of three' while simple in form has the capacity to frame a philosophical thought exercise or template within the policy-making structure as an ideal starting point. This short list also provides a companion of examination to one of the traditional assessment tools of policy-making based on asking three questions. What is working well? What are the weak links? And, what are the emerging or lurking issues?<sup>24</sup> The use of the Rawls's reference to the basic structure concepts, although providing a cursory answer to the biometrics question, requires further discussion to develop a more inclusive and descriptive outline of the philosophical "tools" to be used in policy-making.

In Samuel Freeman's, *John Rawls: Lectures on the History of Political Philosophy*, Rawls introduces his own four point framework of the roles that "political philosophy" can contribute to a "society's political culture." These involve practical roles. First, discussion can result in philosophical and moral agreement leading to "social cooperation on a footing of mutual respect;" secondly, orientation of how people think of their political institutions; thirdly, reconciliation by showing the way "in which institutions, when properly understood, "from a philosophical point of view are rational"; and, fourthly, the idea of probing the limits of practical

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<sup>24</sup> The origin is somewhat obscure but has been a consistent part of my more than 30 year career dealing with fact-finding, evaluation, assessment, and report preparation and is used as the three leading questions of inquiry.

political possibility. (Freeman, 2007, 10) By applying the idea of “practical political possibility” ethical and moral links encourage dialogue of questions and answers that can be linked and assigned within the policy making process and indeed even identified as ultimate outcomes.

As scholars of Rawls soon learn, his thoughts are expressed initially, as an idea or what is termed “a thought experiment,” and then expanded with lists and steps, only to be revisited and further developed. It is among these lists, developed to support his thoughts that substantial philosophical findings that are, I argue, of direct interest to policy-making. For example, there are four recurring themes throughout Rawls which have a direct impact on the engagement of ethics within public policy, and these will be examined as part of the development of a bridging framework. The themes emerge as the driving factors to be weighed and assessed during the consideration of ethics in public policy, such as the use of biometrics for identity cards and the mass storage, analysis, and distribution resulting from the information. These themes include: (1) public reason and public understanding; (2) reasonable pluralism; (3) a well ordered society; and, (4) social co-operation. It is important to consider these key thoughts, developed by Rawls, to provide connectors between philosophy and political science, accepting that philosophical ideas represent thought processes while political science represents actions.

These Rawlsian themes, which are repeated and discussed in detail in *The Law of Peoples* (1999) and *Justice as Fairness: A Restatement* (2001), identify the building blocks for measurements within the biometrics policy-making framework. First, is there acceptance of an understanding by the public for the application of the policy and is it reasonable? Secondly, is there evidence of a consensus of agreement and compliance with the policy? Thirdly, is the society sufficiently liberal and responsive in an orderly manner to recognize and acknowledge

the advantages and disadvantages of the biometrics policy? And, fourthly, is there a demonstration of social co-operation to ensure that “the practical aim to narrow disagreement at least regarding the most divisive controversies, and in particular those that the constitutional essentials,” is achieved. (JF, 28)

The thesis refers to the need for a “framework” to combine philosophical thoughts and the use of biometrics in policy-making. Rawls also identifies a “framework” concept. Rawls writes: “In providing a public basis of justification, a political conception of justice provides the framework for the liberal idea of political legitimacy.” (JF, 41) Today the Canadian government promotes the need for frameworks including the all-pervasive Performance Management Framework (PMF). And, it is through the concept of a framework that the Thesis offers a chart and Venn diagram <sup>25</sup>to demonstrate the areas where philosophy and public police making can be recaptured and conjoined.

An analysis and application of Rawls and his approaches requires the recognition and acknowledgement that his concepts of justice and fairness are supported by principles, theories, rules, and lists. These lists, which routinely range from three to six supporting points, are amended, adjusted or discarded as necessary. Helpful comments to achieve a clearer understanding of Rawls and his thought processes are provided by Professor Thomas Pogge. Pogge cautions that an understanding of Rawls requires time “to absorb his (Rawls) framework and key ideas.” (Pogge, 2007, Preface x) Can we do more to deal with ethics in the political milieu of governance, public policy, and administration, and can Rawls assist with the challenge?

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<sup>25</sup> A diagram in which mathematical sets or the terms of a logical argument or syllogism are represented by circles, the position and overlap of which indicate the way in which the different sets or terms are related. Source *Universal Dictionary*, 1987.

There is a loose connection between Rawls and the quest for an ethical approach to biometrics somewhat buried within his chapter on ‘Fair Equality of Opportunity’ in *A Theory of Justice*. Only through a thorough reading as noted, does Rawls reflect on ethics and the biometrics question. “Any ethical theory”, claims Rawls, recognizes the importance of the basic structure as a subject of justice.” (TJ, 84) Application of a Rawlsian view of ethics that can be applied within the political realm of social cooperation and justice as fairness is developed in the following passage, including, I would argue, as value-added evidence to encourage further debate.

“In justice as fairness society is interpreted as a cooperative venture for mutual advantage. The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce greater sum benefits and assigns to each certain recognized claims to share in the proceeds. What a person does depends upon what the public rules say he will be entitled to, and what a person is entitled to depend on what he does. The distribution which results is arrived at by honoring the claims determined by what persons undertake to do in the light of these legitimate expectations. (TJ, 84)

An opportunity is presented in the section, on Rawls’s Chapter 14 on Fair Equality of Opportunity (TJ, 83) to consider the safety, security and identity protections of privacy and identity theft, whereby the policy of biometrics and identity cards is seeking to respond to a growing list of public concerns with fragmented approaches to identity cards; use, misuse, abuse and fraud; and sharing and transfer of information within national and between international interests. I argue that Rawls’s thoughts on rules, a defined scheme of activities, and the concept

of greater sum benefits are all relevant to identifying and applying ethical considerations to assist in public policy-making.

The optics of safety and security continue to surface as a principal way of rationalizing the use of biometrics to confirm personal identification. This is clearly evident, I argue, throughout the Canadian and international efforts to collect, store, and share biometric foreign visa applications.

Minister Coderre, in his presentation of evidence to the Standing Committee on Citizenship and Culture stated:

In the aftermath of the terrorist attacks in the United States on September 11, 2001, identity has taken a new prominence in countries around the world. Canada has been no different. Canadians have come to see the ability to establish identity as an important element of personal and collective security. (Committee evidence, Thursday, February 6, 2003)

Following his comments on security, Minister Coderre added a further economic cost factor. He notes Canadians were victims of identity theft at a “cost of \$2.5 billion a year to consumers, banks, credit card firms, stores and other businesses.” (Committee evidence)

Rawls’s principles and theories provide an insightful companion structure within the boundaries of philosophy to align the administrative and technical considerations of biometrics policy. Rawls’s direct work, supplemented by analysis and citations by his peers and more recent academic scholars, provides the “golden nuggets” of the practical application of his thoughts to

current and ongoing public policy issues and arguably with reference and application to the use of biometrics for personal identity cards.

### 3.2 Public Interest and Public Reason

Rawls's thoughts on what he terms public interest and public reason is well articulated in *The Laws of the People with "The Idea of Public Reason Revisited."* (Rawls, 1999) Extensive parsing of the book which emerged from refinement of a series of lectures supports one of the principle points that offers direct influence on policy making through public reason. The numerous references to "public reason" contained in the book, and index citations in related Rawlsian literature, demonstrate the important of the concept. Public reason was introduced and developed after the publication of *A Theory of Justice*, and is just one example of the continuing enhancement and expansion of his ideas towards justice and fairness. As Rawls emphasizes "public reason" throughout his work it is important to provide clarity of his meaning:

If free and equal persons are to cooperate politically on a basis of mutual respect, we must justify our use of the corporate and coercive political power, where those essential matters are at stake, in the light of public reason. (TJ, 2001, 91) <sup>26</sup>

Rawls also recognizes the source public reason based on Rousseau. "Rousseau's view contains an idea of what I have called public reason. So far as I know the idea originates with

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<sup>26</sup> The footnote in *John Rawls Lectures on the History of Political Philosophy* –Samuel Freeman ed., 2007, 211, is helpful in defining public reason: "Public reason is the form of reasoning appropriate to equal citizens who as a corporate body impose rules on one another backed by sanctions of state power. Shared guidelines for inquiry and methods of reasoning make that reason public, while freedom of speech and thought in a constitutional regime make that reason free."

him, though versions of it are certainly found later in Kant, who is also important in this connection.” (Rawls, Freeman ed., 2007, 231)<sup>27</sup>

For Rawls, the key to his theory of justice is through three fundamental ideas. “The idea of a society as a fair system of cooperation, the idea of a well-ordered society, and the idea of the basic structure of society.” (JF, 14)

### **3.3 Capacity to Guide and Motivate**

Understanding Rawls is the first task. Secondly, we must interpret him correctly. Thirdly, the philosopher and ethicist must also have the capacity to apply Rawls to practical public policy questions, which, as we have shown, is not an easy task as the historical literature on biometrics reveals. An examination of Rawls is required to search for his principles and rules as guidance to respond to the absence of ethics within the identity card discourse. Pogge provides a certain comfort level when he argues that, “Rawls did not give us all the answers. But he left us with a living theoretical framework within which we can debate and resolve the political questions we face. The value of Rawls is the capacity to guide and motivate. (Pogge, 196)

His ideas can contribute to the biometrics debate as support through the ability to promote the rights of the individual and community with his arguments associating security with the theme of the common good.

Guidance from Rawls that can arguably be redirected towards a model of acceptance within the milieu of public-policy making can be extracted, deconstructed, reconstructed and

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<sup>27</sup> Rawls’s comments appear in his lecture notes, ‘The Point of View of the General Will’ p. 231 in *John Rawls Lectures on the History of Political Philosophy*, Samuel Freeman, ed., 2007.

reformatted based on his thoughts in *The Law of Peoples with "The Idea of Public Reason Revisited"*. Rawls presents his thoughts on reasonable pluralism; fair cooperation among free and equal citizens who accept publicly recognized principles of justice determining the fair terms of that cooperation. He supports open discussion of fundamental political questions and what he terms a reasonable family of political concepts of right and justice. (LP: 12, 31, 125, and 132)

The utility of *A Theory of Justice* for the practical use in public administration offers little value to the policy practitioner unless his philosophical approach is 'translated' into the quantitative language of policy-making. Rawls states in the Preface to *A Theory of Justice*, "that an important test of a theory of justice is how well it introduces order into our considered judgements over a wide range of questions." (TJ, ix) Rawls instructs that: "The reader is more free to follow his preferences and to look at the problems which most concern him." (TJ, ix) His ideas, presented at the highest level, are meant as guideposts, which appear to be ignored or discounted, resulting in the absence of ethics from the policy-making arena.

Rawls provides the clues and the evidence necessary to take his thoughts to another dimension and align them with the practical example of biometrics. Rawls identifies specifics in *The Law of Peoples*. For example, the introduction of a five-point supporting structure to his thoughts on public reason offers evidence of key words that are helpful as public policy principles. Brock writes that when philosophers "move into the public policy domain, they must shift their primary commitment from knowledge and truth to the policy consequences." (Brock, 787) The more practical approach with his statement is the ultimate objective of the policy-maker in responding to their mandates from government is to take "the dreams of the architect

and put them into the realities of the builder.”<sup>28</sup> Brock’s thoughts are further supported with claims by Jonsen and Butler when they argue that a leading problem is “understanding the conceptual and practical relationship between ethical positions and policy positions.” (Jonsen and Butler, 20) Their work is clearly supportive of the need to search throughout Rawls’s thoughts for fragments of ideas that can be formed into the framework to link ethics and morals with policy-making.

The five points outlined by Rawls lead us in a positive direction to determine “basic moral and political values” through “a constitutional democratic government’s relation to its citizens and their relation to one another.” (LP, 132) The points respond to the basic questions to confirm public reason of a policy by asking “fundamental political questions to which it applies; determining the person to whom it applies (government officials and candidates for public office); identifying reasonable conceptions of justice; applying the discussion of coercive norms to be enacted in the form of legitimate law for a democratic people; and checking that the principles derived from their conceptions of justice satisfy the criterion of reciprocity.” (LP, 133)

### **3.4 Key Ethical Issues: On the “Expansion of Function” and Rawls’s “Moral Powers”**

The rapid expansion of biometrics technology, as described earlier in the Thesis, raises a number of ethical concerns. Among the leading philosophical and public-policy issues to resolve is the use and abuse an individual’s personal biometrics. Evidence shows these concerns of “expansion of function” were raised during the 2003 House of Commons Committee. “The fact that the information (biometrics personal data) would be just “sitting there” could result in

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<sup>28</sup> The source are my personal words which I have used during the past 30 years as part of work as a senior policy advisor in government and when dealing with the realities of public administration and project management assignments.

government departments and agencies lobbying for expanded access.” (Committee Hearing transcript –CIMM 372)

While governments and corporations increase the use of biometrics to confirm personal identification, there is an absence of evidence of ethical policies to support the initiatives either in the national or global domains. As a result, important philosophical questions have emerged that require answers to fill the gap between biometric policies and ethical issues of human rights, morals, and privacy protection. Rawls also works to join philosophy and political science when he writes that the, “ideal of public reason is realized, or satisfied, when citizens are told of the reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable.” (PL, 135)

To align philosophical thoughts, specifically ethics, with policy-making requires an appreciation of Rawls basic concepts, and to extract these core “moral powers” from his work. Identification and analysis of these initial principles – often described as the result of Rawls working behind the veil of ignorance – are fundamental to the development of the template to provide a ‘litmus test’ for ethics and morals within public policy. Twenty years following his 1951 lectures, Rawls was able to gather and connect his thoughts within *A Theory of Justice*. Further refinements followed in *Political Liberalism*, 1993 and *Justice and Fairness: A Restatement*, 2001.

Scattered throughout the work, as suspended particles (in the science experiment), are his thoughts with Rawls supporting fundamental measurements towards a moral framework and testing mechanism. The starting point is represented by his two principles based on what he calls “the two moral powers.” (JF, 18)

These moral powers are the enablers to engage citizens in Rawls's idea of social cooperation. Rawls, as is his practice throughout his work, identifies certain limits to his thoughts. He explains that justice as fairness identified as part of the principles is a political conception of justice designed for the special case of the basic structure of society and is not intended as a comprehensive moral doctrine.

These Rawlsian "moral powers" of justice good are missing from the biometrics debate. Inclusion in a framework to test the presence of ethics and morals within policy-making would take a significant step towards bridging the divide, again evidence of Rawls's ability to contribute. These powers are identified as the capacity for a sense of justice in accordance with the principles of political justice that equate to the "fair terms of social cooperation". (JF, 6) The second "moral power" is a capacity for a conception of the good. Moreover, Rawls argues that justice as fairness takes political justice to be the basic structure of society, that is, its main political and social institution and how political and social institutions fit together into one unified system of cooperation (JF, 40).

### **3.5 Rawls's Liberty Principle and Equality Principle as Policy-Making Building Blocks**

Framework models require a firm foundational methodology. In *Justice as Fairness: a Restatement*. Rawls writes: "In providing a public basis of justification, a political conception of justice provides the framework for the liberal idea of political legitimacy." (JF, 2001, 41) His direct reference to "framework" connects with current public-policy making. Rawls provides the framework model upon which specifics can be added as points of reference, or in the language of the policy-making practitioners, "building blocks" by way of his [Liberty Principle and Equality Principle.] The Liberty Principle is applicable to the biometrics assessment, the example being

the practical application of the identity card presented with a claim by politicians that part of the policy is to ensure security and protection from threats to freedom and liberty, as on September 11, 2001. Rawls's first principle establishes that, "Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all" (JF, 42). The second principle: The Equality Principle "ensures social and economic inequalities" are "attached to offices and positions open to all." (JF, 42)

The two principles ask leading questions that policy-makers need to incorporate into their daily language as policies, procedures, and programs are considered. As in the focussed example of the biometric identification card the two principles resonate with meaning and importance. Moreover, Rawls's two key principles of justice pose questions for us: First, when examining policies involving biometrics, are the liberty and equality principles considered? Secondly, as noted in Wickins, is there a risk of social exclusion as biometric policies could "unfairly discriminate(s) against individuals or classes of people." (Wickins, 1)

Rawls's thoughts on equality align with the search for opportunities to recapture ethics within policy-making. His definition of equality is "specified by the principles of justice which require that equal basic rights be assigned to all persons." (TJ, 504) The direct application to the biometrics question is requirement for an identity card would be applied to all citizens through "the impartial application and consistent interpretation of rules to such precepts as to treat similar cases similarly." (TJ, 504) Moreover, his First Principle of Justice focussing on basic liberties also provides arguably, a form of quantitative measurement for the application of ethics within policy making. Rawls's view is that: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others." (TJ-60) Accordingly, the equality and liberty principles are transferable as markers within policy-making. A demonstration of the

alignment is developed and shown in Chart 1- Rawlsian Philosophical Thoughts to Recapture Ethics within Policy-Making. (See page 81).

Throughout Rawls's work and reflections by authors who analyze and review his theories, either by commentary, or reference there is the repeated and at times expanded reference to key principles and themes. Through the years Rawls continued to refine and adjust the themes from his early and initial lecture notes, through *A Theory of Justice* to *Political Liberalism* to *Justice as Fairness: A Restatement*, while at the same time his contemporaries reflect and build on his thoughts and seek to interpret and apply his work.

The recurring and consistent themes in Rawls help to maintain a focus on the leading concepts to respond to the ideas to test and align with policy-making. With direct reference to the use of biometrics there is the need to examine (1) moral powers, (2) overlapping consensus, (3) public justification, (4) public reason, (5) fair terms of social cooperation and (6) the influence of a well-ordered society. Moreover, there is the over-arching requirement to consider Rawls's understanding of human dignity and human rights as applied to biometrics. Previously it was noted that Rawls introduces a thought or principle supported by a list of expected actions to achieve the intended outcome, which he often leaves unresolved. Rawls's expectation is that his principles, thoughts and lists will be applied to practical questions. The following thoughts on the fair terms of social cooperation provide a useful example and connection to the biometrics questions.

### 3.6 Rawls and Social Cooperation

Social cooperation is important to Rawls. He continually refers to the idea of “social cooperation,” or, at times, a “fair system of cooperation,” in order to reinforce his ideas of a “well-ordered society.” Rawls lists three features of social cooperation, which also provide a cross-over opportunity between the language of the philosopher and policy practitioner. Jonsen and Butler previously identified the differences in vocabulary between the philosopher and political scientist as a barrier to effective inclusion of ethics within policy-making. Rawls’s indicators describe the image of a well-ordered society, which is the policy objective of the biometrics identity card. These indicators are “public acceptance and agreement with the principles of the political conception of justice; evidence and acceptance of effective regulation; and, citizens recognize the principles of justice and act accordingly to accept their duties and obligations.” (JF, 8)

Now here we may make a direct connection between these Rawlsian indicators and the 2003 statement by Minister Coderre to the Standing Committee on the policy question “why an identity card”.

The heart of the proposed citizenship law is a modernized statement of what it means to be a citizen of Canada. The legislation recognizes that citizenship is not static; that a law passed almost 50 years ago is now out of step with contemporary Canada. This debate on privacy and a national identity card must also be contemporary. (Standing Committee, 2003)

The transcript evidence from the minister refers to the public policy and administrative principle of the introduction and use of an identity card. While the policy remains dormant today, from the

public view it can be argued that any forward movement to revisit the biometrics identity card would benefit from the consideration of Rawls's concept of a well-ordered society, which would include references to ethics further to a "contemporary" debate on an identity card.

A cursory review of Rawls's works would leave a public administrator flummoxed as his thoughts are developed from the language of a philosopher with a unique and somewhat archaic vocabulary to present ideas, arguments, and, indeed, movement into the realm of abstract thought experiments. Moreover, time is not of the essence for the philosopher, such as Rawls and his cohorts, as demonstrated by his many years through refinements and restatement of his thoughts, principles, observations, and rules. This approach of both language and time is not within the mind of a public policy thinker. Rawls is not constrained by bureaucratic language and action based on process and procedures to achieve results. The bureaucrat thinks in terms of ultimate political and administrative outcomes, intermediate and short-term objectives, performance measurements, risk measurements and management, and the ever present cost/benefit/effectiveness analysis. The typical policy summary is allocated to a single page to include the issue, two sentences of the background, a few sentences to describe the problem requiring resolution, three or four options, including advantage/disadvantage notes, and a recommended action.

Development of an applicable framework to join Rawls's philosophy with public policy and encourage further debate is required today, and urgently so. Rawls provides a range of possible direction suggesting a cafeteria-style approach to answer practical public administration questions about the identity card debate. A Rawlsian approach helps bridge the gap as an initial step towards reigniting the case for philosophy within public administration. Rawls identifies rules, principles, and ideas to support his theories which can be applied, tested and measured.

The case example of the identity card and citizenship visa program followed the standard public administrative template. It left no room to incorporate any semblance of an interest in a philosophical assessment of ethics and morals, apart from references to governance and privacy. As others have noted in their more extensive work, there is a language barrier in terms of the use of a skill-set of words to communicate philosophical thoughts within the meeting rooms and cubicles of public administrators. Their functioning language is often referred to as 'bureaucratise.' Schools of public policy and philosophy are not conjoined at the heart and mind, and the barriers to the cross-pollination of ideas and capacity to accept the role that philosophy contributes will mean that the century-long gap continues.

The question remains: May we now, and in the foreseeable future, raise the level of philosophical thought to an acceptable and continuous level of debate, discussion, analysis, and application with the public policy area? This includes thoughtful consideration of morals, ethics, and human dignity for the capture, recording, and distribution of person biometrics for personal identification by governments and the commercial sectors. Examination of the literature for the past 100 years shows the change from individuals "snooping" to the forthcoming mind-reading technology. Philosophers have been successful at identification of the gap between philosophy and political science; but, I would argue they have been less than successful in bridging the gap with evidence to support philosophical arguments involving any foundation or framework to support ethical considerations of biometric technologies.

Today, biometrics technology and applications to capture, store, analyze and distribute personal identification information has reduced humanity to the binary computer language of zeros and ones. The literature review identified a need to bridge the gap between biometric

technology and biometric morals and ethics in order to support human rights in a coming biometric age. The current public policy emphasis is on applications of the technology. There exists an absence of an appropriate and applicable solid understanding of an ethical matrix or moral standards of human rights. Such understanding would assist bridging the divide, and provide increased ethical support to the advancements of technology.

To move forward one needs to reflect on Philip Agre's comments in his chapter 'Beyond the Mirror World: Privacy and the Representational Practices of Computing'. (Agre and Rotenberg, 1998) Agre's thesis is that privacy problems have arisen through the application of industrial methods to a nonindustrial sphere of life. (Agre and Rotenberg, 1998) This is the point at which Rawlsian thought can play an important part in providing supporting information to build a template to respond to Agre's idea of the "nonindustrial *sphere of life*". Agre writes: "Privacy problems have arisen through the application of industrial methods to nonindustrial spheres of life, where normative relations of representation and control are different." (Agre and Rotenberg, 57) During the past decade individual papers have questioned the advancement of biometrics applications with cautionary notes about the need for ethics largely involving privacy issues. Agencies and organizations must consider, from the outset, the privacy risks that a proposed use of biometrics will pose. (Crompton, 22) Agre reinforces the claim. He writes: "The moral interest at stake in data protection regulation has seemed unclear to many." (Agre and Rotenberg, 7)

Rawls's principle of justice as fairness responds to Agre and Crompton, specifically, and to the absence of ethics in general discussions about an identity card. Rawls writes "a well-

ordered society is also regulated by its public conception of justice.” (TJ, 1981, 454) His supporting view is, “we submit our conduct to democratic authority only to the extent necessary to share equitably in the inevitable imperfections of a constitutional system. Accepting these hardships is simply recognizing and being willing to work within the limits imposed by the circumstances of human life.” (TJ, 1981, 355) For Rawls, laws and institutions, no matter how efficient and well arranged, must be reformed or abolished if they are unjust. (TJ, 1981, 364) Although it was not expected that Rawls would envision the impacts of biometrics on human rights, his philosophical thoughts on human rights and justice are indeed applicable as an approach to filling the gap.

Rawls writes in *A Theory of Justice*: “Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.” (TJ, 364) Rawls argues that justice requires equality but that “A law or policy is sufficiently just, or at least not unjust, if when we try to image how the ideal procedure would work out, we conclude that most persons taking part in the procedure and carrying out its stipulations would favour that law or policy.” (TJ, 357) As a result it is necessary to align the thoughts of Rawls with the questions of human rights, freedoms, and equality of the individual. This is pressing at a time when biometrics are taken and used either voluntary within the constraints of legislation and regulations to provide identification when requested by the state or other non-governmental commercial and private sector interests.

Rawls helps to synthesize questions of the gap. He offers appropriate thoughts to include a philosophical framework. “We must choose for others” Rawls writes, “as we have reason to

believe that they would choose for themselves if they were at the age of reason and deciding rationally.” (TJ, 209) Among the deciders to include are trustees, guardians, and benefactors who can “often make accurate estimates as to what is or will be wanted.” (TJ, 237) Here Rawls’s idea of justice as fairness has a direct reference to the application of biometrics. Duty requires support and compliance with “just institutions that exist and apply” along with “further arrangements not yet established.” (TJ, 115) While Rawls did not have biometrics within his sphere of focus it is instructive to apply his considerations of support and compliance for the goal of a just society involving everyone’s natural duty to participate in what he calls the natural scheme. (TJ, 115) For example Rawls views justice as fairness as a fundamental natural duty. This duty requires individuals to support and to comply with just institutions that exist and apply to all. It also places constraints on “arrangements not yet established, at least when this can be done without too much cost.” (TJ, 115) We also need to consider Rawls’s thoughts the capacity of political office and authority. He writes: “The principle of participation compels those in authority to be responsive to the felt interests of the electorate.” (TJ, 227)

There is also substantive direction from Rawls that is applicable to the ethics question in the guise of his 1983 consolidated lectures on ‘The Role and Powers of the Sovereign’. The responsibilities of a sovereign to the population, writes Rawls, is to change the background conditions against which they reason; stabilize a scheme so that it is to everyone’s mutual advantage; and ensure that individuals do not renounce or abandon their rights, but authorize the sovereign to use rights in certain ways. (Rawls, cited in Freeman ed., 78-80)

Let us consider arguments and claims to recapture ethics within policy-making, and offer some measure of guidance to make the connections between philosophy and political science. Chart 1 below presents Rawls's theories, principles, rules, and lists. It is designed to highlight leading issues that have a direct relationship and bearing on the ability to involve Rawls's principles into the practical requirements of policy-making. Moreover, it is important to construct a framework representing values and ethics from Rawls to be used when a biometric identity card for Canadians is revisited and has returned to a level of political and public debate.

Rawls does not flesh out ethical patterns (Montgomery, 1986, 129), but has the capacity to guide and motivate. (Pogge, 2007, 196) A Rawlsian philosophical analysis can provide substance to the question of how to respond to the comment in the Biometrics Forum summary report that ethics is absent from the discussions and to consider ways to recapture ethics within policy-making.

**Chart 1. Rawlsian Philosophical Thoughts to Recapture Ethics Within Policy-Making**

<b>Rawlsian Philosophical Thoughts to Recapture Ethics Within Policy-Making</b>			
<b>Concept</b>	<b>Application</b>	<b>Outcome Measurement</b>	<b>Biometric Application</b>
Liberty principle	Equal basic rights of the individual. Freedoms and well-being	Governance, right to individual freedom policies, oversight and reporting of non-compliance.	Responds to national and international security concerns.
Equality principle	Openness, awareness, and accessibility for all.	Integrity reviews and reports of codes of values and ethics, efficiency and accountability.	Effective communications through the Forum and future awareness initiatives.
Justice as fairness	Recognition and application of ethical and moral considerations.	Compliance and confirmation that the culture of political society demonstrates a fundamental role in how institutions are viewed as a system of social cooperation (JF, 6).	Society is informed about the universal application of biometrics for personal identification.
Fair system of cooperation	Application of ideal of the reasonable and rational programs.	Evidence of compliance with principles even at the expense of their own interests when others do likewise (JF, 191).	Recognizes by the use of technology that the application follows the 'social contract tradition' of Rawls. (JF, 95-96)
Common good	Support of fundamental laws for the advancement of the common good.	Compliance and acceptance of appropriate laws and regulations supporting the objectives of society.	Taking paper-based identification to the technical level of biometrics is a common good. (JF, 95)
The five questions of basic morals and political values	<ul style="list-style-type: none"> <li>✓ Political questions</li> <li>✓ Determining application</li> <li>✓ Identifying conceptions of justice</li> <li>✓ Confirming a legitimate law for democratic people</li> <li>✓ Checking for evidence of reciprocity</li> </ul>	Alignment with performance strategies, organizational direction and goals.	Provides the biometrics policy-makers with a value check-list when considering uses for identification cards now and future applications beyond the original intentions as noted in "scope creep" and the emergence of "mind-reading". The check-list serves as a template.
Well-ordered society	<ul style="list-style-type: none"> <li>✓ Public acceptance and agreement with principles of justice</li> <li>✓ Evidence of effective regulation</li> <li>✓ Acceptance of duties and obligations</li> </ul>	Governance indicators, resources, roles and responsibilities, reporting, accountability, and communication.	Biometric identification can arguably assist with the stability of a well-ordered society through security enhancements. "Members of society accept and know others accept the same." (JF, 9)
Political conception of justice (PCJ)	<ul style="list-style-type: none"> <li>✓ Basic structure of a democratic society</li> <li>✓ Family of political values</li> <li>✓ Citizens are free and equal (JF, 26).</li> </ul>	Provides a "mutually acceptable point of view from which citizens' claims on the main institutions of the basic structure can be adjudicated (JF, 27).	The technology of biometrics is moving forward in the absence of ethics. The PCJ identifies "more relevant considerations and helps to provide a balance." (JF, 134)

#### 4.0 Recapturing Ethics in the Policy-Making Process

In this chapter, we will introduce, demonstrate, evaluate and balance Rawlsian ideas, particularly fairness and justice with the quantitative outcomes of the practical requirements. The following sections provide the “framing elements” and “moral measurements” to recapture ethics and values into policy-making. These are through Rawls’s thoughts about ethics and morals, human rights, dignity, governance, and fairness and justice. These Rawlsian elements will, I argue, present philosophical measurements to fill the gap.

The capacity to recapture ethics in the policy-making process, I argue, will result from more understanding of ways to overcome the divide through a willingness to accommodate and apply philosophical principles. Public policy ethics and moral values within the context of biometric applications are absent. These absences are overshadowed by the accelerated advances in technology and the resulting new and diverse applications of biometrics as a means to confirm personal identification. To provide a synthesis of the arguments, claims, and evidence there is a need to present ways to recapture and embed philosophy into the development, analysis work, and political and public debates.

The question is asked: Is there an opportunity to find meaning with Rawls and the challenges presented by Wolff, Jonsen/Butler, Brock and Holt et al? According to Jonsen and Butler, “the philosophers’ academic style seems out of place.” (Jonsen and Butler, 19) Brock claims: “Philosophers are viewed as somewhat strange beasts in governmental and policy circles.” (Brock, 789) And, Holt and his colleagues write, in 1912, that philosophy “must be accorded a place in the main current of modern thought.” (Holt, 1)

It is important to indicate that additional, and a far wider range of analysis, of the Rawls's philosophical thoughts on individual rights, freedoms of choice, governance of self, and application of morals and ethics is necessary to fill the gap between biometric policies and biometric ethics. Rawls provides the guidelines through his thoughts. However, it is success in overcoming the divide which will only be achieved by reflecting on the literature, case studies, and methodologies to provide the policy-making work with logic models with quantitative measurements. The result will be to introduce, demonstrate, evaluate and balance Rawlsian ideas, particularly fairness and justice with the quantitative outcomes of the practical requirements.

It is through an identification, assessment and application of Rawls's principles can the absence of ethical be added to the biometric identity card debate. The first requirement is to rework the principles into the current language of the policy-maker. Jonathan Wolff's Introduction in *Ethics and Public Policy: A Philosophical Inquiry* focuses on the inability to consider and debate "a moral problem that arises in the context of public policy and to formulate the correct moral theory." (Wolff, 4)

#### **4.1 A Rawlsian Framework to Measure Public Policy**

The absence of philosophical, ethical and moral influences in the process of making and delivering policies is confirmed with a three-pronged examination of the literature review, case reviews, and Rawls's thoughts. The appropriate next steps are arguably the need for greater understanding of the approaches used by philosophers and public policy practitioners to their respective areas of expertise and influence.

The initial step is to recognize that public administrators use a one page summary format to identify and analyse policy and to proffer recommended solutions or next steps. The model is standard, and by all accounts remains largely unchanged through the generations. More than 5000 years ago the Chinese mandarins used many of the same methods. Today, the hierarchy, bureaucracy, files, documents, can be traced back to that time. The work then, and now, was directed towards practical approaches and methods. The policy-makers use an “issue paper” model today that by general practice and custom includes five steps.

The answer to the outstanding question of how to rejoin ethics and morals to public policy thought, perhaps simple and yet complex to execute, is to work within the bureaucratic template and add a sixth section devoted to the representation of philosophical impacts. This involves the thoughts of an ethicist to the policy-making group, and is the first step towards recapturing an acknowledgement and representation of philosophy into the decision making mix. For example the collection, retention, and sharing of personal biometric information left the philosophical assessment of ethics and morals on the sidelines. There is considerable evidence of technical and legal works, but why the absence of philosophical works?

During the past century the scholarly and academic debates and dialogue have asserted the need to find the necessary and appropriate approaches to bridge the gap between the abstract realm of philosophical thought and, especially ethics, morals, and human rights and dignity, with the practical and technological world of political science and public policy. Evidence of the existence of this gap (perhaps better described as the weak or missing link) is consistent but without an apparent resolution. Rawls provides a pivotal turning point and it is important to reflect on his work in order to redress the gap.

The initial Biometrics Forum background paper made brief references to privacy and civil rights in a section dealing with governance, (*Forum Background Report*, 20) but apart from these references the paper largely remains a technical document. As noted in the detailed discourse in Chapter Two, evidence of any direct or indirect reference to the ethical and moral implications is absent. There were a number of issues relating to the implementation of national identity cards that were not addressed. Among these seven indicators was ethics.

The pathway to recapture and reintroduce the two opposing approaches to the polemics of government is to find agreement on a unified direction. The first is the implementation of public policy through action of administration, and the other through considered and reflective thought and scholarly approaches of philosophy. Both public policy and philosophy need to be conjoined and work together to recognize the strengths that each can contribute to result in a combined philosophic and technical theory. There is an absence of evidence on moral and ethical commentary, or at the least notations to encourage debate, philosophical ideas at a minimum, and inclusion as a maximum objective, are crucial. Meanwhile, in the scholarly arguments and debates of the past century the chasm continues.

The few words in the Citizenship report indicating the need for ethics within the Canadian identity card and visa biometrics programs, combined with the failure to carry forward to the debate, the few ethical and moral thoughts presented in the background paper is albeit only a single point of discussion. However, I would argue that these brief comments were the attempt by the authors of the background paper to identify a worthwhile indicator to recapture ethical thought within the realm of policy-making. The background paper noted in Chapter One provided only a fleeting but welcomed demonstration of an attempt to incorporate philosophical

ideas into a public policy debate on biometric identity cards. No other supporting evidence was discovered during the research part for this paper.

#### **4.1.1 Ethics and Morals**

Rawls provides thought experiment challenges to assess the merits of his philosophical approaches supporting the arguments and claims for practical connectivity with public-policy making. Furthermore, his work offers an opportunity to construct a workable template to respond to the ethical and moral challenge and to encourage debate. As an example, Rawls's work makes repeated references to key thoughts including reasonable pluralism, fair terms of social cooperation, and a well-ordered society. Rawls can assist with is two principles. His first principle focuses on basic equal rights for individuals while not conflicting with the freedom of others. The second principle concentrates on the fair distribution that can be incorporated within the policy-making discourse. These two principles provide leading questions required to support practical analysis work.

Recapturing ethics within policy work requires reflection on Rawls's thoughts on public interest and public reason. His arguments are well articulated with *The Law of Peoples*. There are two summative actions necessary to respond to the two concurrent themes of the thesis. The first is the large role to be played by ethics in policy work and the second is the application of Rawls's philosophy to ethics and biometrics for personal identification.

As Pogge has noted, Rawls's thoughts are, "a work in progress to be used and developed as well as improved and adjusted in light of new arrangements and objections, new knowledge and technologies, and new political developments. (Pogge, xi) Rawls provides a glimmer of connectivity when he writes that the "unity of reason" and the "primacy of the practical" is the

constitution of reason. This involves the question of how the theoretical point of view and the practical point of view fit together, and how the legitimate claims of each form of reason are adjusted in a reasonable (and of course consistent) way. (Rawls, Herman ed., 2000, 16)

Rawls provides the best summary to link philosophical thought with public policy when he states, “Faced with the fact of reasonable pluralism, and granted that, on matters of constitutional essentials, basic institutions and public policies should be justifiable to all citizens.” (JF, 89)

As biometric policies are developed it is important to reflect on Rawls’s thoughts on toleration and common interests. He proposes that by setting to establish what he terms “intrinsic value or net value of satisfaction of interests, it is liable to find that denial of liberty for some is justified in the name of the single end.” (TJ, 211) Moreover, to support the identified gap between biometric public policies and the argument that ethics are absent, Rawls’s ideas about justice and liberty limits for individual and collective rights “is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse.” (TJ, 215) Now, at the level of ethical specification, the question is this: Does the Liberty Principle support or require biometric person ID? Does this technology promise to protect freedoms for all, and equally? Or, would such an “intrusion” lead to “still worse” invasion of freedom? Therefore, ergo The Liberty Principle still requires ethical application.

### 4.1.2 Human Rights

Rawls's work places emphasis on human rights which is reinforced with his thoughts on justice and fairness. This emphasis when extracted from the work strengthens to the development of the vision of a philosophical framework, albeit somewhat of a check-list in search of a template, complete with a logical methodology and qualitative measurements, to test for ethics within public policy-making. George Kateb is supportive of Rawls when he writes, "There is already a substantial theoretical literature in defence of rights. It begins in the revolutions in Britain in the seventeenth century, continues in Kantian philosophy, and develops further in John Rawls's influential political philosophy." (Kateb, 3) Kateb notes that a common example of a conflict of rights is, "the clash between security and liberty, which again raises the question explored by Rawls in setting the principles for liberty and rights. While Rawls's views are representative of the past 50 years of philosophical thoughts it is Kateb who brings the question into current focus for continuing debate. He writes in 2011:

"We should always be especially suspicious when officials or media experts tell us that abridgements of the rights of one person, a group of persons, or all people, for the sake of security (the right of life) is called for. Nothing is more elastic than national security or gives a better cover to reason of state; nothing is more real than an abridgement of the rights of particular individuals and designated groups." (Kateb, 31)

"Human rights," states Rawls, in *The Law of Peoples*, "set a necessary, though not sufficient standards for the decency of domestic political and social institutions. In doing so they limit admissible domestic law of societies in good standing in a reasonably just Society of Peoples." (JF, 80)

The moral and ethical rights associated with privacy, while identified as a key part in the biometrics debates, are not fully developed. Charles Fried writes, “The view of morality upon which my conception of privacy rests is one which recognizes basic rights in persons, rights to which we are all entitled equally, by virtue of their status as persons. These rights are subject to qualification only in order to ensure equal protection of the same rights in others. (Fried, cited in Schoeman ed., 1992, 208) Privacy is a relatively new subject for debate in the many centuries of the development of morals and ethics with philosophy. Schoeman provides an assessment of the historic background of privacy in his chapter, “Privacy philosophical dimensions of the literature.” (Schoeman, 1992) The introduction offers an ideal point for further debate and supports the argument that a divide exists. “Despite the fact that privacy has been identified by contemporary philosophers as a key to human dignity, or alternatively as something even more basic than rights to property or other rights over one’s own person, there was no major philosophical discussion of the value of privacy until the late 1960’s.” (Schoeman, 1)

In order to connect biometrics with human rights and Rawls’s views it is useful to consider Professor Brian Orend’s words: “Rawls makes a link to human rights defending standard human rights to liberty, security, subsistence welfare, basic education, and equality of recognition as a person before the law.” (Orend, 2002, 84) It is through Rawls’s reference to security as a part of human rights that one can envision a bridging link to biometrics policy-making. Rawls’s human rights philosophy seeks to ensure the security of the individual. Biometrics policy claims to offer security through enhanced personal oversight. Therefore, the argument is presented that human rights offer a bridging relationship with policy-making when questions of security are considered. The result is a link to recapture and recognize Rawls’s thoughts within biometric policy-making.

### 4.1.3 Dignity

Closely connected with Rawlsian human rights is the idea of human dignity. Within the technology of biometrics for personal identification there is the echo of the statement in the *Forum Background Paper*:

“For some, biometrics technology seems inherently privacy-invasive. Unlike other technologies, biometrics does not just involve the collection of information *about* the person, but rather information *of* the person.” (*Forum Background Paper*, 15)

The reference to “of the person” and one’s dignity when biometrics and personal identification is considered are reflected by Rawls: “Our sense of dignity is tied to our recognition that some ways of life are admirable and worthy of our nature, while others are beneath us and unfitting.” (Rawls, cited in Freeman ed., 265)

While the biometrics technology debate continues so too does the questions on the impact on the individual in the absence of a philosophical base. While researching human dignity and policy-making a chapter ‘Policy-Making’ in George Kateb’s book *Human Dignity* spoke directly to the Thesis question. Where is there evidence of philosophy within policy-making?

“Government becomes even more a web of thousands of discretionary acts performed by hundreds of civilian, intelligence, military, bureaucratic officials, in the company of lobbyists and publicists. Most of the acts are hidden, many of them secret. No one, no matter how well placed, knows the full extent of activity. From these bureaucracies come secret concerted long-term policies.” (Kateb, 2011, 195)

#### 4.1.4 Governance

The forward movement of technology to support a much more comprehensive and intrusive use of biometrics for personal identification is continuing to gain traction as a measure of control. At the same time, missing is a leading philosophical indicator of a *governance or oversight framework* that would assess, measure, and adjust as required the ethics and morals of public policy.

During the past decade the application of biometrics has continued to increase through government and commercial applications to the point where nothing is a surprise, including examples such as the use of biometrics to ensure teachers are in their classes in South Africa. Globally shared individual biometric visa application information, and the use of finger prints to start a car, all add to the growing biometric application list in both the public and private sectors.

As noted above, there is an absence of a solid, rigorous case for the inclusion of ethics to the public policy advances, generated by the increased requirements to confirm and monitor individual identity supported by rapid advances in technology and information management systems. For example, the question ‘who is checking the checkers?’, and the direct involvement of third party contracted services to collect, analyse, store, and distribute individual biometric information, requires answers to assure human rights are protected.

While the public policies of biometrics align with the U.S. and global security issues, there is an absence of the application of ethical theories and public ethic policies to reflect human rights and values of society. Examples such as the theoretical and practical ethical analysis of

“scope creep;”<sup>29</sup> convergence of public and private sector data sharing; multi-lateral and global information sharing, storage, and retrieval; third party capture of biometric information; unexpected and unintended consequences; and, data protection and identity theft each, and collectively, function without an ethical or moral compass.

The formation of an ethics policy may be the most vital task in the conversation between ethicist and policy makers. It, more than the functions of articulating principles and elucidating policy preferences, brings ethics close to the familiar descriptions of politics as “the art of the possible.” If carried out successfully it would make public ethics the art of discerning the morally preferable among its practical applications. (Jonsen and Butler, 24) Further, Wickins reconfirms and identifies the need to incorporate ethics within biometrics. “The field of biometrics is a branch of biotechnology, and the ethics of its use should be scrutinised closely.” (Wickins, 46)

Alterman’s contribution also provides current and supportive commentary on the absence of philosophy within biometrics. His work uncannily can be projected to the next stage of biometrics dealing with mind-reading to be identified in the next section as a near-present and emerging technology. “Thus one cannot safely assume that the technological limitations of biometrics protect our privacy today, and it is fairly certain that they will do less and less as time goes on.” (Alterman, 141)

It is at this point we turn to Rawls to consider how justice and fairness contributes helps to recapture ethics and values in the biometrics public-policy making process.

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<sup>29</sup> “Scope Creep,” or what at times is referred to as “Function Creep” is used to indicate an expansion of a program, policy or procedure for other purposes beyond the original objective.

#### 4.1.5 Justice as Fairness

Justice as Fairness is central to Rawls's work and reappears continually as an outcome of his ability to take liberalism and liberties to a higher level within the 20<sup>th</sup> Century. Justice as Fairness<sup>30</sup> confirms a the legitimacy of a regime," that its political and social institutions are justifiable to all citizens – to each and every one – by addressing their reason, theoretical and practical." (Rawls, Freeman ed. 13) Can we apply Rawls's justice and fairness approach to the policy-making biometrics question and arguments to support increased personal identification for security purposes?

As noted earlier, the driving force to use a biometric identification card for Canadians is to align with the requests (demands) by a consortium of international countries seeking to monitor the movement of people and to address security risks as a result of the September 11, 2001 New York attack. I argue that the justification of any policy must include risk assessment of fairness and justice as a policy norm or principle to the biometric questions is a solid first step. Limited evidence exists by the authors of the Forum Background Paper to elevate ethics into the debate through civil liberties. They write:" What are the public values that should underpin decisions about the use of biometrics in citizenship and immigration identity documentation?" (*Forum Background Paper* 14)<sup>31</sup> The reader will recall that in the final report resulting from the Forum "ethics and dignity" were not addressed. (*Biometrics Forum Report*, 43)

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<sup>30</sup> Rawls writes as a footnote to his lecture notes 'A Central Thesis of Liberalism' in John Rawls: *Lectures on the History of Political Philosophy* (Freeman ed., 2007, 13). "Justice as fairness is the name I have given to the political conception of justice developed in *A Theory of Justice* and in *Justice as Fairness: A Restatement*.

<sup>31</sup> The Public Policy Forum authors are listed as David Brown, Director of Special Projects and Rachelle Cloutier, Research Associate.

Pogge also contributes to application of Rawls in his chapter, “The Reception of Justice as Fairness”. In terms of the biometrics question, it could be claimed that Rawls is interested in motives. Rawls seeks to justify how, “a conception of justice and the institutional order it justifies can produce in citizens an effective sense of justice and the political virtues.” (Pogge, 193)

A “practical aim of justice as fairness” (JF, 5) is provided in the Venn diagram below (Diagram 1). The diagram demonstrates at the “highest conceptual level” opportunities combine values and ethics within policy-making.

#### **4.2 Filling the Ethical Gap for a Canadian Identity Card**

Guidance to fill the missing elements of an ethical dialogue for the public policy to develop and introduce a biometrics identity card for Canadians remains unresolved. There is a need of a champion to rekindle and foster the philosophical issues. This is not expected to be an easy task to accomplish. The negative influences and procedural barriers are best described by Jonsen and Butler in their clear and unquestionably direct claims. “Those concerned with policy making- the politicians, the bureaucrats and the technicians – generally avoid discussing ethics. The philosophers’ academic style seems out of place in their world of constituencies, interest groups, power blocs, insistent demand, and limited resources.” (Jonsen and Butler, 19) Policy analysis is described, by Jonsen and Butler, “as the complex interaction of interested parties within the confines of economic, legal, cultural, social, and technical facts prevailing at the time and anticipated in the future.” (Jonsen and Butler, 20)

Jonsen and Butler's arguments and claims speak directly to the fundamental structural problems that traditionally and by practice sustain the divide between public policy and philosophy. While their paper, "Public Ethics and Policy-Making," makes no reference to Rawls's theories their work claims alignment with Rawlsian thoughts in their identification of what they describe as the problems of the relationship between philosophy and public policy. The efforts to embed ethics within the biometrics discussions are areas according to Jonsen and Butler that must be overcome. They write: "Policy analysis describes the complex interaction of interested parties within the confines of economic, legal, cultural, social and technical facts prevailing at the time and in the future." (Jonsen and Butler, 20) Absent in the list of "interested parties" are philosophers. The discontents, argued in detail in their paper are: (1) the language of ethics vocabulary; (2) ethics is viewed as personal behaviour; (3) ethicists have no constituencies; and, (4) policy makers seek experts to assist with analysis of economic or sociological problems. The longstanding and continuing result is that there is no room in the continuum for ethics and contributions from philosophers. They conclude with the seminal words which resonate throughout the Thesis: "There appears to be no room for ethical experts." (Jonsen and Butler, 21)

From Warren and Brandeis 1890 to Wolff 2011, the theme is consistent with the criticism that privacy and use of personal identification respond to technology in the absence of a legal, moral or ethical foundational support structure. The advances in technology at whatever level within society have moved forward without the influence or impact of philosophical considerations. At the same time, scholars have not only raised the need to include philosophy alongside public policy considerations without apparent success because the issue remains

unresolved. Scholars continue to seek avenues to engage in a debate. The challenge offered by the literature research identification, analysis, and findings is to find the missing link between realpolitik of public policy and the inclusion of philosophy represented by morals, ethics, and human dignity

Gary Marx writes in his chapter “Ethics for the New Surveillance”: “We are becoming a transparent society of record such that documentation of our history, current identity, location, and physiological and psychological states and behaviour is increasingly possible.” (In Bennett, ed., 39) The *Forum Background Paper*, bears repeating as the keystone claim: “Biometrics do not just involve the collection of information *about* the person, but rather information *of* the person, that is intrinsic to them.” (*Forum Background Paper*, 15) Marx puts the concept into concrete terms. “To be alive and a social being,” writes Marx, “according is to automatically give off signals of constant information – whether in the form of heat, pressure, motion, brain waves, perspiration, cells, sound, olifacteurs, waste matter, or garbage, as well as more familiar forms such as communication and visible behaviour.” (Marx, cited in Bennett, ed., 39)

Jonsen’s and Butler’s thoughts reinforce the existence of the gap. They write, “Those concerned with policy-making – the politicians, the bureaucrats and the technicians – generally avoid discussing ethics.” (Jonson and Butler, 9) The reference to avoidance reconfirms the few words in the Citizenship and Immigration biometrics report indicating the need for ethics within the Canadian identity card and visa biometrics programs combined with the failure to carry forward to the debate the few ethical and moral thoughts presented in the background paper.

Biometrics is today overtaken by new technology, emerging global issues and public policy to ensure border security. There is a fundamental necessity to revisit the findings and include a public ethics lens within the current and ongoing debates about the introduction of a Canadian identity card. Use of biometrics for immigration matters is now largely global. It functions in the absence of any ethical reference framework for practical uses of fingerprints, iris, and hand and face biometrics to confirm personal identification.

### **4.3 Convergence of Biometric Technologies**

The impact of the convergence of biometrics information stored on large data memory units and interconnected internationally has entered a new era of complexity. I would argue that the outcomes are far beyond the 1890's neighbourhood "snooping" identified by Warren and Brandeis and represent a new era beyond the analysis of individual biometric characteristics as noted previously in the use of finger prints and facial scans for visa applications,

The technology exists and is being used to align physical and behavioural characteristics to include fingerprints, face prints (facial recognition-ready photographs), iris scans, palm and voice prints, wrist veins, hand geometry, a person's gait, and DNA along with non-biological, or non-physical features including signatures and key-stroke patterns.

The preliminary and emerging evidence is that convergence of biometric information helped to identify "Jihadi John". This demonstrates the capacity to take part of personal biometric information and through massive data evaluation and assessment techniques align the disparate parts to confirm an individual. I would argue that through the introduction of the convergence of biometrics to identify "Jihadi John" the thesis transcends any particular historical or temporal case study.

As an example of convergence the FBI's Criminal Justice Information Services Division (CJIS) and the bureau's Biometric Center of Excellence use of all the biometric data that comes into the FBI's possession. This includes every fingerprint, every image (even from the internet), and every phone message that anyone sends to the FBI. Stephen L. Morris, assistant director of the CJIS, was quoted in *Defense One*, "In terms of identifying John, he said, "I'm not going to tell you how we did it," but added, "You have to have something to search ... you can have images with faces but if you're not capturing it in the right way, if there's not data in that image to make a comparison, it's just not useful."<sup>32</sup>

As the research for the thesis progressed the continuum of the capacity to use biometric information lengthened as we will see in the next section dealing with brain-reading. Moreover, the examination of John Rawls provides a transit stoical and formal set of philosophical values and norms that will perdure through time in spite of technological change, including changes to biometrics technology.<sup>33</sup>

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<sup>32</sup> "Jihadi John" and the Future of the Biometrics Terror Hunt in *Defense One Today*. February 27, 2015 [by Patrick Tucker http://www.defenseone.com/technology/2015/02/jihadi-john-and-future-biometrics-terror-hunt/106263/?oref=d-river](http://www.defenseone.com/technology/2015/02/jihadi-john-and-future-biometrics-terror-hunt/106263/?oref=d-river).

<sup>33</sup> I acknowledge the suggestion of Professor Gregory J Walters, Ph.D. Professor of Philosophy to incorporate the convergence section in the thesis and to acknowledge the timely inclusion of the "convergence concept" as the basis of identifying "Jihadi John".

#### 4.4 Emergence and Application of Brain-Reading Technologies

The next stage of biometrics, and the impact on personal identification, is referred to as “brain reading.”<sup>34</sup> The technology of the process is to examine, track and record patterns of brain waves and brain imaging. These recent advances are still under development. As with the introduction of finger prints, facial recognition and iris scans in place, a new form of biometrics is forthcoming. Mind-reading technology is on the horizon and I would argue in need of both a formative and substantive analysis of the ethics and morals. The mind-reading research work presented by John-Dylan Haynes and Geraint Rees (2006) and again Haynes (2011) reveals an interesting and somewhat challenging concept for purposes of the future of biometrics and personal identification. The current gap is increased as new philosophical challenges emerge beyond the biometrics of fingerprints, facial recognition, and iris scans.

The next philosophical concept, requiring only a mention here, is “mental privacy” a term used by Martha J. Farah in her paper, “Neuroethics: the practical and the philosophical.” (Farah, 2005) Professor Farrah writes that mental privacy “is fundamental to our self-model that our thoughts are private and cannot be read from the outside. Typically, the belief that someone could read or control my thoughts could be considered an indicator of a psychiatric condition. This means that any technical applications that can read a person’s mental states must be handled with particular sensitivity because they can be used to invade a person’s “mental privacy”.

(Farah, 2005) These comments reiterate Pogge’s claim that Rawls’s thoughts, “can be adjusted in light of new arguments and objections, new technology, and new political developments.”

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<sup>34</sup> For a detailed explanation and future of ‘brain reading,’ see Haynes, John-Dylan and Geraint Rees. ‘Decoding mental states from brain activity in humans’. *Neuroscience*. Volume 7, July 2006. (pp. 523-534).

Haynes, John-Dylan, ‘Brain Reading: Decoding Mental States from Brain Activity in Humans’. *Oxford Handbook of Neuroethics*, Judy Illes and Barbara J. Sahakian eds., April 2011.

(Pogge, xi) Mental privacy associated with mind-reading and projected to personal identification in the future requires a new set of considerations beyond this paper, but I argue where the influence of Rawls will serve a use towards finding a solution to fill the gap in ethical and biometric identification policy.

To provide the reference and context to the initial question “the absence of ethics” in the 2003 Citizenship and Immigration Forum, and to consider the implications of a biometric identification card, I present, a viable methodological framework. The template requires further development to determine qualitative measurements. It can be molded from Rawls, based on a model of concentric circles, with parts imbedded with the policy- making process. Use of a radial venn diagram as an initial template provides an immediate thought experiment solution, informed by Rawls, to reconnect and recapture the core elements within the policy-making process. They are the large role of ethics in policy work and the use of Rawls’s ethics and biometrics personal identification. The diagram demonstrates the opportunity to embed philosophical thoughts, ideas principles, and concepts within the empirical, quantitative and practical confines of policy-making.

“It is our belief that issues in philosophy in general and in the area of ethics and rights in particular cannot be fully understood or resolved unless they are localized and applied to human situations and dilemmas. There is a need to examine the interconnections that exist between theory and practice.” (Werhane, v) The arguments towards the need to recapture ethics in the public-making process are best described in the preface to *Philosophical Issues in Human Rights* by Patricia H. Werhane, A. R. Gini, and David T. Ozar New York: Random House. (1986).

The following Venn diagram use to present the idea of the capacity for philosophical ideas represented by Rawls to become attached and imbedded within the policy-making process.

**Diagram 1. Recapturing Ethics in the Policy-Making Process with Rawlsian Moral Norms**



The philosophical issues identified in the chart suggest opportunities for further study and examination to embed key ideas within policy-making. For example, the attachment of each of the circles is balanced. This does not need to be the case as different weights of influence and participation can be shifted as required. As an example “ethics and dignity” were identified as missing from the Forum discussions in 2003. Upon reflection, these elements, along with others identified in the model can be added to the fact-finding, examination, analysis and recommended actions of policy-making. The model is presented to encourage further thought, particularly to advance qualitative and quantitative measurements. This thesis recognizes the need for such

measurements, in reality the depth and breadth required must for a more complete analysis. Further analysis would also involve the alignment with Chart 1 (See page 83) to create the framework that recaptures ethics and values in the public policy-making process.

Rawls's theory of justice as fairness offers guidance to visualize, consider, develop and discuss an ethical and moral biometrics supporting public policy framework. The "lists" provide an ideal basis for a template that can be applied and incorporated into the policy-making process. The methodology and structure is simple and straight forward through the use of the inclusion of key points with the concept of a radial venn diagram with unlimited access points. The radial venn, used to demonstrate overlapping relationships, is presented in Section 4.4. There is no evidence in the research review and readings either in Rawls or in other reports that his core ideas could and should be aligned. The inclusion of his key points, as demonstrated in the radial venn, suggests it is not just a simple but elegant solution to support a logical approach to include ethics in the policy-making that argues for a biometric identity.

## Conclusion

This thesis began with a simple guiding research question; what role does ethics play in biometric policy-making? We have argued by means of an historical philosophical scholarly review of the literature. The literature reveals an absence of ethical reflection on biometric policy for personal identification. This thesis has examined the challenges of policy-making, and more specifically, has argued the relevance of Rawls's philosophical theories to the problem. We have identified a gap between philosophers and policy makers with respect to finding remedies for recapturing ethics and values within the art and science of public policy-making.

In addition, we humbly offer a Rawlsian framework and invite both philosophers and policy-makers to reflect on this framework as a starting point to renew the public policy debate.

The absence of ethics in a policy to use biometrics as part of a proposed Canadian identity card kindled a spark of interest in the development approach to explore and address the question why? As we have seen in Chapter One biometric advancements for personal identification are expanding nationally and internationally in the absence of ethics. Chapter Two examines the emergence of a biometrics national identity card. Chapter Three offers a Rawlsian approach of justice as fairness to align philosophy and policy-making. And, Chapter Four seeks to recapture ethics in the policy-making process by providing a synthesis of the arguments, claims, and evidence in the thesis.

The literature review, representing scholarly works, spans a century of references to the divide between philosophy and political science; analysis of two cases involving an identity card and visitor visa documents; and, reflections on the utility of Rawls's thoughts as a lynch-pin

between the divide, have been summarized in the use of a radial venn diagram, illustrated in the previous chapter, to demonstrate the opportunity to recapture ethics within the public-policy making process.

Based on an assessment of the past, immediate past, and examination of the present trends, it can be argued that Canadian public policy is heading in the direction of some form of a national biometric identity card. The introduction of the card could, when combined with our Rawlsian framework for public policy-making consolidate international demands for cross-border security compliance, along with the plethora of regulated cards which includes the SINs, passports, driver's licence, health cards, old age identifiers, citizenship status including first nations and ease of access cross-border cards such as Nexus.

Moving forward to the next few years and beyond, the discussions and policies previously described continue on a path to acknowledge only the technical and operational influences of using biometrics for personal identification. Such applications include data collection, retention, sharing, and risks of information misuse and abuse. The absence of a philosophical framework to encourage inclusion of considered, appropriate, and applicable thoughts supporting ethics and morals remains absent and unresolved.

It is not beyond the realm of possibility that a Canadian biometric identity card will be forthcoming within the foreseeable future, largely for enhanced cross-border transit and security demands as an enhancement to the current photo and 'tombstone' information in the current passport, (sans fingerprints and iris scans now in use nationally and internationally for visa applicants). While the public policies of biometrics align with the U.S. and global security issues, we have shown an absence of the application of ethical theories and public ethics policies to

reflect human rights and values of society. For example, the theoretical and practical ethical analysis of scope creep; convergence of public and private sector data sharing; multi-lateral and global information sharing, storage, and retrieval; third party capture of biometric information; unexpected and unintended consequences; and, data protection and identity theft.

The applications of biometrics have continued to increase through government and commercial applications to the point where nothing is a surprise, including the use of biometrics to ensure teachers are in their classes in South Africa; globally shared individual biometric visa application information; and, finger prints to start a car, all being added to the growing list. Furthermore, the evidence indicates that there is an absence of a solid, rigorous case for the inclusion of ethics to the public policy advances. These advances are generated by the increased requirements to confirm and monitor individual identity supported by rapid advances in technology and information management systems. For example, the question of who is “checking the checkers”<sup>35</sup> and the direct involvement of third-party contracted services to collect, analyse, store, and distribute individual biometric information requires answers to assure human rights are protected.

Years ago we were travelling on a day trip with our son and his visiting pen-friend from Budapest, Hungary. As we were leaving the driveway Zoltan said he forgot his passport in the event “we were stopped by the police.” Zoltan travelled nowhere in his home country without an identity card and thought that one was needed in Canada. Not at that time, but is a national identity card on the horizon?

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<sup>35</sup> A term used in public administration to identify multiple layers of sign-offs or oversight.

We have identified a range of public policy issues involving biometrics identified at the Citizenship and Immigration biometrics forum, albeit more than a decade ago, but an absence of evidence to support philosophical arguments involving any foundation or framework to support ethical considerations. The literature review identified a need to bridge the gap between biometric technology and biometric morals and ethics to support human rights. The current public policy emphasis is on applications of the technology in the absence guidance from an appropriate and applicable understanding of an ethical matrix or moral standards of human rights.

The use of biometrics technology raises critical questions related to public security, the protection of individual privacy, and the preservation of Canadian values and civil liberties. It is a difficult balance between personal and social needs and the interests for which there is no simple solution. Not just a concern about biometric technology creep into the realm of personal identification and tracking, but a fast-moving avalanche of technology that is far outpacing the support structures of administrative policies, laws, regulations to reconcile privacy with the philosophical questions of ethics, morals, and human dignity.

We have accepted that the thoughts developed by Rawls offer a framework of distilled philosophical practices and norms that may inform the conceptual ethical issues and practical challenges of new biometric technologies.

The thesis demonstrates three principle points that individually and collectively raise the importance of the need to accelerate and continue level debate about biometrics for personal identification, and specifically the introduction of a Canadian identity card. Firstly, the thesis statement is indentifying the absence of a philosophical framework with the application of

biometrics for purposes of personal identification, and its use as part of a Canadian identity card with international data sharing implications. Secondly, the rapid expansion of the technology and inventive applications of biometrics creates an absence of ethical and moral consideration as part of developing policies for an identity card, and for use as part of the visitor visa applications. And, thirdly, the ongoing scholarly work that defines the barrier between philosophical and political science approaches to solving emerging problems through the use of a tool-box containing both moral and practical views and analysis.

The application of brain imaging technology to read one's thoughts directly from brain activity through the use of electroencephalography (EEG) and magnetoencephalography (MEG) introduced earlier in the paper is emerging in the immediate future.<sup>36</sup> The impact, controls, and potential uses not even realized today remain unresolved. From all indicators in the available literature, there is a void to support strategic philosophical questions dealing with ethics, morals, and human dignity.

The question of the ethical policies to support biometric public policies is of paramount social and emerging political concern. A more thorough discussion is required to align philosophy with public policy to achieve better decisions about the use of biometrics technologies. Through such discussions ethical considerations will be returned to the policy discussions before a biometrics national identity card appears. The expectation is that this thesis will help to provoke a discussion among philosophers, scholars, elected representatives and appointed officials. Emerging from the thesis statement, the examination of the issues, and

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<sup>36</sup> Reflection on articles provided by Dr. Nils-Frederic Wagner [nils-frederic.wagner@web.de] "Decoding mental states from brain activity in humans" by John-Dylan Haynes and Geraint Rees and "Brain Reading: Decoding Mental States from Brain Activity in Humans" by John-Dylan Haynes. See bibliography references.

development of opportunities to link philosophy and policy-making are ethical, moral and human dignity questions requiring attention.

“The moral interest at stake in data-protection regulation has seemed unclear,” claims Agre. (Agre, 7) Ethics is missing from the 2003 biometrics discussions. (*Biometrics Forum Report*, 43) A Rawlsian philosophical application to the process offers a practical and instructive way to recapture ethics within the policy-making process. The overarching instruction to bridge philosophy to public policy-making through a Rawlsian analysis remains with Pogge. Pogge writes: “Rawls did not give us all the answers. But he left us a living theoretical framework within which we can debate and resolve the political questions we face.” (Pogge, 2007, 196)

I argue in support of the thesis that the success in the recapturing ethics and values in the public policy-making process and in the language of policy-maker “is doable” through a Rawlsian analysis. The earlier single sentence reference in the *Forum Background Paper* requires repeating “Unlike other technologies, biometrics does not just involve the collection of information *about* the person, but rather information *of* the person.” (*Forum Background Paper*, 15)

In closing it is ‘fair and just’ to let Rawls speak for himself. He asks: “Does there exist a reasonable method for validating and invalidating given or proposed moral rules and those decisions made on the basis of them?” (Rawls, 1951, 177)

Rawls says yes:

“From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This requires us to support and to comply with just institutions that exist and

apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.” (TJ, 115)

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