

Towards an alternative concept of privacy

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Abstract

Purpose – There are a lot of discussions about privacy in relation to contemporary communication systems (such as Facebook and other “social media” platforms), but discussions about privacy on the Internet in most cases misses a profound understanding of the notion of privacy and where this notion is coming from. The purpose of this paper is to challenge the liberal notion of privacy and explore foundations of an alternative privacy conception.

Design/methodology/approach – A typology of privacy definitions is elaborated based on Giddens’ theory of structuration. The concept of privacy fetishism that is based on critical political economy is introduced. Limits of the liberal concept of privacy are discussed. This discussion is connected to the theories of Marx, Arendt and Habermas. Some foundations of an alternative privacy concept are outlined.

Findings – The notion of privacy fetishism is introduced for criticizing naturalistic accounts of privacy. Marx and Engels have advanced four elements of the critique of the liberal privacy concept that were partly taken up by Arendt and Habermas: privacy as atomism that advances; possessive individualism that harms the public good; legitimizes and reproduces the capitalist class structure; and capitalist patriarchy.

Research limitations/implications – Given the criticisms advanced in this paper, the need for an alternative, socialist privacy concept is ascertained and it is argued that privacy rights should be differentiated according to the position individuals occupy in the power structure, so that surveillance makes transparent wealth and income gaps and company’s profits and privacy protects workers and consumers from capitalist domination.

Originality/value – The paper contributes to the establishment of a concept of privacy that is grounded in critical political economy. Owing to the liberal bias of the privacy concept, the theorization of privacy has thus far been largely ignored in critical political economy. The paper contributes to illuminating this blind spot.

Keywords Internet, Privacy, Communication technologies, Critical political economy, Critical theory

Paper type Conceptual paper

1. Introduction

How Privacy Vanishes Online (*New York Times*, March 16, 2010).

Critics Say Google Invades Privacy with New Service (*New York Times*, February 12, 2010).

Privacy No Longer A Social Norm, Says Facebook Founder (*The Guardian*, January 11, 2010).

Google’s Eric Schmidt: Privacy is Paramount (*The Guardian*, March 19, 2010).

Google Street View: Politicians Insist on Privacy (*Süddeutsche Zeitung*, August 12, 2010).

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These example newspaper clippings show that privacy is a much talked-about issue in the contemporary information society. The problem of discussions about privacy in the media and the public is frequently that a clear understanding of privacy is missing. Privacy tends to be conceived as a universal and always positive value. The downsides of privacy tend to be neglected. The task of this paper is to show some limits of the privacy concept by giving a critical political economy analysis of this notion. Such an approach is especially interested in uncovering the role of surplus value, exploitation, and class in the studied phenomena (Dussel, 2008, p. 77; Negri, 1991, p. 74).

One task of this paper is to provide some meta-theoretical reflections about how a privacy typology can best be grounded (Section 2). The Marxian notion of fetishism is employed for challenging naturalizations of privacy (Section 3). A more systematic critique of the modern privacy concept is elaborated (Section 4). The critical political economy approach reminds us that it is important not to see only positive aspects of privacy, but also its downsides. But such an analysis brings up the question if one should drop the privacy concept or if it is possible to establish an alternative privacy concept that avoids the current limits. This question is outlined in the concluding section of this work (Section 5). The major novelty of this paper is that it uses critical political economy for working out theoretical foundations of a socialist privacy concept.

2. The privacy concept

Jürgen Habermas (1987, 318-21) has provided a model of modern society that allows conceptualizing the relation of the private and the public. The lifeworld is made up of the private sphere (family, private households, intimacy) and the public sphere (communicative networks that enable private persons to take part in culture and the formation of public opinion; Habermas, 1987, p. 319). The lifeworld is coupled in various ways to the economic system and the administrative system that are steered by money and power. In modern society, the economy has become disembedded from the private sphere and has formed a separate subsystem of society (Habermas, 1989). The private sphere is for Habermas the sphere, where the individual is most in control of his activities and communications. Discussions about privacy typically relate to the question if and to which extents humans are able to control data that is generated about them. It shares the value of private self-determination characteristic for the private sphere. The distinction between the private and the public spheres is relevant for the privacy concept because it entails “the distinction between things that should be shown and things that should be hidden” (Arendt, 1958, p. 72).

Ferdinand Schoeman (1984b, p. 2f) distinguishes between definitions of privacy as:

- claim, entitlement, right;
- the measure of control of an individual over personal information, intimacy, and visibility; and
- state or condition of limited access to an individual.

Ken Gormley (1992, p. 1337f) discerns four types of privacy definitions:

- (1) privacy as an expression of one’s personhood and personality;
- (2) privacy as autonomy;

- (3) privacy as citizens' ability to regulate information about themselves; and
- (4) multidimensional notions of privacy.

Daniel Solove (2008) says that there are six different privacy definitions: privacy as:

- (1) the right to be left alone;
- (2) limited access to the self;
- (3) secrecy;
- (4) control over personal information;
- (5) personhood; and
- (6) intimacy.

Solove (2004) distinguishes between the following conceptions:

- privacy as protection from Big Brother;
- privacy as secrecy;
- privacy as non-invasion; and
- privacy as control over information use.

The problem of these privacy typologies is that they are arbitrary: there is no theoretical criterion used for distinguishing the differences between the categories. The different definitions are postulated, but not theoretically grounded. A theoretical criterion is missing that is used for distinguishing different ways of defining privacy. Providing such an analysis is a meta-theoretical task.

Anthony Giddens sees the "division between objectivism and subjectivism" (Giddens, 1984, p. xx) as one of the central issues of social theory. Subjective approaches are oriented on human agents and their practices as primary object of analysis, objective approaches on social structures. Structures in this respect are institutionalized relationships that are stabilized across time and space (Giddens, 1984, p. xxxi).

Herman Tavani (2008) distinguishes between restricted access theories, control theories, and restricted access/limited control theories (RALC) of privacy. The restricted access theory of privacy sees privacy given if one is able to limit and restrict others from access to personal information and personal affairs (Tavani, 2008, p. 142ff). The classical form of this definition is Warren's and Brandeis' notion of privacy: "Now the right to life has come to mean the right to enjoy life – the right to be let alone" (Warren and Brandeis, 1890, p. 193). They discussed this right especially in relation to newspapers and spoke of the "evil of invasion of privacy by the newspapers". Although some scholars argue that Warren's and Brandeis' (1890) paper is the source of the restricted access theory (for example: Bloustein, 1964/1984; Schoeman, 1984b; Rule, 2007, p. 22; Solove, 2008, p. 15f), the same concept was already formulated by John Stuart Mills 42 years before Warren and Brandeis in his 1848 book *Principles of Political Economy* (Mill, 1965, p. 938):

That there is, or ought to be, some space in human existence thus entrenched "around", and sacred from authoritative intrusion, no one who professes the smallest regard to human dignity will call in question: the point to be determined is, where the limit should be placed; how large a province of human life this reserved territory should include (Mill, 1965, p. 938).

This circumstance shows the inherent connection of the modern privacy concept and liberal thought. Restricted access definitions of privacy can for example be found in the works of Allen (1988, p. 3), Bok (1983, p. 10), Gavison (1980, p. 428f), Nock (1993, p. 1), Schoeman (1992, pp. 15, 106, 107f).

Restricted access theories conceive privacy as transsubjective, it is seen as an objective normative right or moral value that exists also if politics or human practices choose to implement mechanisms that reveal private facts in public or allow the public access to the private sphere of individuals. Privacy is considered as a moral structure that is aimed at protecting all humans. Therefore, Mill conceives privacy as a circle around individuals:

There is a circle around every individual human being, which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep: there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively (Mill, 1965, p. 938).

The restricted access theory of privacy is an objective theory in Giddens' terminology because it conceives privacy as a transindividual moral structure that exists as right and ethical imperative relatively independently of single human actions.

The control theory of privacy sees privacy as control and self-determination over information about oneself and over the access to one's personal affairs (Tavani, 2008, p. 142ff). The most well-known privacy theory of this kind was formulated by Alan Westin, who defined privacy as the "claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others" (Westin, 1967, p. 7). Other examples are the definitions given by Fried (1968/1984, p. 209), Froomkin (2000, p. 1464), Miller (1971, p. 25), Quinn (2006, p. 214), Schultz (2006, p. 108), Rule (2007, p. 3), Shils (1966, p. 281f), Solove (2004, p. 51), Spinello (2006, p. 143). Control theories are focused on individual self-determination over privacy. Privacy is dependent on human action, individuals may choose to withhold or reveal a lot of information about themselves. Privacy in these theories is therefore variable, dynamic, and flexible, depending on the behaviour of individuals. Control theories of privacy are subjective theories in Giddens' terminology because they stress the dependence of privacy on human subjectivity and individual action and choosing.

The RALC of privacy tries to combine both concepts. It distinguishes "between the concept of privacy, which it defines in terms of restricted access, and the management of privacy, which is achieved via a system of limited controls for individuals" (Tavani, 2008, p. 144). James H. Moor uses privacy on the one hand to "designate a situation in which people are protected from intrusion or observation", on the other hand speaks of "different zones of privacy", in which:

[...] one can decide how much personal information to keep private and how much to make public. [...] Different people may be given different levels of access for different kinds of information at different times (Moor, 2000, p. 207f; see also: Shade, 2003, p. 278; Introna, 2000, p. 190).

Giddens (1984) has tried to overcome the separation of subject and object in his theory of structuration by formulating the theorem of the duality of structure that connects subjects and objects of society dialectically by arguing that social structures are medium and outcome of social actions, at the same time they enable

and constrain practices (Fuchs, 2003a, b). Applying this theorem to privacy gives a good description of the RALC: control refers to the human agency level of privacy that enables the existence of a protective sphere, which enables humans to act in society with a degree of protection into their private affairs. Limited access refers to a moral structural sphere that protects individuals from privacy intrusion and enables them to act in society. The RALC sees restricted access and individual control as mutually constitutive. Individuals and society may choose to regulate privacy in certain ways, which is an aspect of subjectivity and action. Based on this action, a sphere of privacy of individuals that is protected from access to others may be set up that enables individuals to act in society, their private sphere, and the public based on privacy and data protection. Privacy control as human action may under certain circumstances or in given contexts (Nissenbaum, 2010, Solove, 2008[1]) then change the degree of access (Table I).

For a critical analysis, it does not suffice to understand, which ways there are of defining privacy. It is also necessary to discuss the limits and problems of the privacy approach. For doing so, I will introduce the notion of privacy fetishism in Section 3.

3. Privacy fetishism

Etzioni (1999) stresses that it is a typical American liberal belief that strengthening privacy can cause no harm. He stresses that privacy can undermine common goods (public safety, public health). That privacy is not automatically a positive value has also been reflected in criticism of privacy. Critics of the privacy concept argue that it promotes an individual agenda and possessive individualism that can harm the public/common good (Bennett, 2008, p. 9f; Bennett and Raab, 2006, p. 14; Etzioni, 1999; Gilliom, 2001, pp. 8, 121; Hongladarom, 2007, p. 115; Lyon, 1994, p. 296; Lyon, 2007, pp. 7, 174; Stalder, 2002; Tavani, 2008, p. 157f), that it can be used for legitimizing domestic violence in families (Bennett and Raab, 2006, p. 15; Lyon, 1994, p. 16; Lyon, 2001, p. 20; Quinn, 2006, p. 214; Schoeman, 1992, p. 13f; Tavani, 2008, p. 157f; Wacks, 2010, p. 36), that it can be used for planning and carrying out illegal or antisocial activities (Quinn, 2006, p. 214; Schoeman, 1984b, p. 8), that it can conceal information in order to mislead and misrepresent the character of individuals and is therefore deceptive (Bennett and Raab, 2006, p. 14; Schoeman, 1984a, p. 403; Posner, 1978/1984; Wasserstrom, 1978/1984), that a separation of public and private life is problematic (Bennett and Raab, 2006, p. 15; Lyon, 2001, p. 20; Sewell and Barker, 2007, p. 354f), that it advances a liberal notion of democracy that can be opposed by a participatory notion of democracy (Bennett and Raab, 2006, p. 15). Privacy has also been criticized

Theoretical criterion	Approach	Description
Subjectivism	Control	Privacy as individual control and self-determination of the access of others to one's private sphere
Objectivism	Restricted access	Privacy as the right or norm of restricting others' access to one's personal affairs
Subject/object-dialectic	Restricted access/control	Privacy as process, in which action regulates and manages the conditions of the private sphere and can thereby enable the existence of a protective sphere that allows individuals to act in society

Table I.
A typology of
privacy theories

as Western-centric concept that does not exist in an individualistic form in non-Western societies (Burk, 2007; Hongladarom, 2007; Zureik and Harling Stalker, 2010, p. 12). There have also been discussions of the concept of privacy based on ideology critique (Stahl, 2007) and intercultural philosophy (see for example: Capurro, 2005; Ess, 2005).

These critiques show that the question is therefore not how privacy can be best protected, but in which cases whose privacy should be protected and in which cases it should not be protected. Many constitutional privacy regulations acknowledge the limits of privacy and private property and that unlimited property can harm the public good. So the fifth amendment of the US constitution says that no person shall “be deprived of life, liberty, or property”, but adds: “without due process of law”. It says that private property shall not “be taken for public use, without just compensation”. Article 14(1) of the German Grundgesetz says that the “property and the right of inheritance shall be guaranteed” and adds: “(2) Property entails obligations. Its use shall also serve the public good. (3) Expropriation shall only be permissible for the public good”. Similarly, the Swedish Constitution (The Instrument of Government, Chapter 2) guarantees “the property of every citizen”, but adds that this is not the case when expropriation is “necessary to satisfy pressing public interests” (§ 18).

Liberal privacy theories typically talk about the positive qualities that privacy entails for humans or speak of it as an anthropological constant in all societies, without discussing the particular role of privacy in modern, capitalist society. Alan Westin (1967) on the one hand gives examples from anthropological literature of societies without privacy, but on the other hand in contradiction to his own examples claims that privacy is a universal phenomenon that can be found in sexual relations, households, personal encounter, religion, puberty, and that is related to gossip and curiosity.

Bloustein (1964/1984) argues that privacy is needed for protecting individual dignity, integrity, independence, freedom, and self-determination. For Westin (1967), privacy provides individual autonomy, emotional release, self-evaluation, and intimacy. Fried (1968/1984) sees privacy as a context that enables human respect, love, friendship, and trust. Benn (1971/1984) says that privacy is a general principle needed for respect, freedom, and autonomy. For Rachel (1975/1984), privacy is needed for protecting individuals from competition and embarrassment. Gerstein (1978/1984) argues that intimacy cannot exist without privacy. For Gavison (1980), privacy protects freedom from physical access, liberty of action, freedom from censure and ridicule, and promotes mental health, autonomy, human relations, dignity, pluralism, tolerance, and democracy. Ferdinand Schoeman (1984a) argues that privacy enables social relationships, intimacy, personality, and personally validated objectives that are autonomously defined. Margulis (2003a, b) says that privacy enables autonomy, emotional release, self-evaluation, and protected communication. Solove (2008, p. 98) argues that privacy is a pluralistic value and provides a list of the values privacy has been associated with: autonomy, counterculture, creativity, democracy, eccentricity, dignity, freedom, freedom of thought, friendship, human relationships, imagination, independence, individuality, intimacy, psychological well-being, reputation, self-development. Given the preceding discussion, the following values can be added to this list: emotional release, Individual integrity, love, personality, pluralism, self-determination, respect, tolerance, self-evaluation, and trust.

Such analyses do not engage with actual and possible negative effects of privacy and the relationship of modern privacy to private property, capital accumulation,

and social inequality. They give unhistorical accounts of privacy by arguing that privacy is a universal human principle that brings about positive qualities for individuals and society. They abstract from issues relating to the political economy of capitalism, such as exploitation and income/wealth inequality. But if there are negative aspects of modern privacy, such as the shielding of income gaps and of corporate crimes, then universalistic liberal privacy accounts are problematic because they neglect negative aspects and present modern values as characteristic for all societies. Karl Marx characterized the appearance of the “definite social relation between men themselves” as “the fantastic form of a relation between things” (Marx, 1867, p. 167) as fetishistic thinking. Fetishism mistakes phenomena that are created by humans and have social and historical character as being natural and existing always and forever in all societies. Phenomena such as the commodity are declared to be “everlasting truths” (Marx, 1867, pp. 175, fn 34). Theories of privacy that do not consider privacy as historical, that do not take into account the relation of privacy and capitalism or only stress its positive role; can, based on Marx, be characterized as privacy fetishism. In contrast to privacy fetishism, Moore (1984) argues based on anthropological and historical analyses of privacy that it is not an anthropological need “like the need for air, sleep, or nourishment” (Moore, 1984, p. 71), but “a socially created need” that varies historically (Moore, 1984, p. 73). The desire for privacy, according to Moore, develops only in societies that have a public sphere that is characterized by complex social relationships that are seen as “disagreeable or threatening obligation” (Moore, 1984, p. 72). Moore argues that this situation is the result of stratified societies, in which there are winners and losers. The alternative would be the “direct participation in decisions affecting daily lives” (Moore, 1984, p. 79).

This discussion reminds us that it is important to contextualize privacy. If it is indeed true that we live in a capitalist society, as the recent world economic crisis has again made clear, then it is important to analyze privacy in the context of the political economy of capitalism. Section 4 will cover this topic.

4. The limits of privacy in capitalism

Privacy has been characterized as a value that is typical for liberal worldviews (Bennett and Raab, 2006, pp. 4, 17; Etzioni, 1999; Moore, 1984, p. 75f). It is therefore no surprise that John Stuart Mill has in his political economy introduced the notion of privacy in relation to private property. When discussing the conditions under which land should be allowed to be transformed into private property, he speaks of the necessity of “the owner’s privacy against invasion” (Mill, 1965, p. 232).

Karl Marx and Friedrich Engels worked out an early critique of liberal privacy concepts. This critique contains four central elements. The critique of privacy by Marx and Engels has not been covered in the literature in any detail. Therefore, the outline of this critique is deliberately strongly quotation-based in order to make their critique available in the form of a comprehensive overview:

- (1) There is no pure individual existence. All human existence is socially conditioned. By conceiving privacy as individual right, liberal privacy conceptions fail to grasp the social existence of humans.

Marx described the position of the relation of the private and the general in the theories of bourgeois political economists:

The economists express this as follows: Each pursues his private interest and only his private interest; and thereby serves the private interests of all, the general interest,

without willing or knowing it. [...] The point is rather that private interest is itself already a socially determined interest, which can be achieved only within the conditions laid down by society and with the means provided by (Marx, 1857/1858, p. 156).

Marx argues that the notion of the private in classical political economy is individualistic and neglects that all individual actions take place within and are conditioned by society.

- (2) The individualism advanced by liberal privacy theories results in egoism that harms the public good.

Marx furthermore stresses that modern society is not only based on individualism, but also on egoism (Marx, 1843b, pp. 235-7, 240). Liberty in bourgeois society is “is the liberty of man viewed as an isolated monad, withdrawn into himself. [...] The practical application of the right of liberty is the right of private property” (Marx, 1843b, p. 235). Modern society’s constitution would be the “constitution of private property” (Marx, 1843a, p. 166). The right of private property in the means of production and to accumulate as much capital as one pleases, would harm the community and the social welfare of others who are by this process deprived of wealth: “The right of property is thus the right to enjoy and dispose one’s possessions as one wills, without regard for other men and independently of society. It is the right of self-interest” (Marx, 1843b, p. 236). “Thus, none of the so-called rights of men goes beyond the egoistic man, the man withdrawn into himself, his private interest and his private choice, and separated from the community as a member of civil society” (Marx, 1843b, p. 236f). Marx further criticizes that the private accumulation of capital results in the concentration of capital and thereby of wealth: “Accumulation, where private property prevails, is the concentration of capital in the hands of a few” (Marx, 1844, p. 41).

- (3) David Lyon notes that the liberal:

[...] conception of privacy connects neatly with private property. Mill’s sovereign individual were characterized by freedom to pursue their own interests without interference [...]. This presupposes a highly competitive environment, in which one person’s freedom would impinge on another’s, hence the need to balance values like “privacy” with others (Lyon, 1994, p. 186).

Crawford Macpherson (1962) has termed this Marxian critique of liberalism the critique of possessive individualism. Possessive individualism is the “conception of the individual as essentially the proprietor of his own person or capacities, owing nothing to society for them” (Macpherson, 1962, p. 3). According to Macpherson, it is the underlying worldview of liberal-democratic theory since John Locke and John Stuart Mill. The problem of the liberal notion of privacy and the private sphere is that relatively unhindered private accumulation of wealth, as the neoliberal regime of accumulation has shown since the 1970s, comes into conflict with social justice and is likely to result in strong socio-economic inequality. The ultimate result of Mill’s understanding of privacy is an extreme unequal distribution of wealth. So his privacy concept privileges the rich owning class at the expense of the non-owners of private property in the means of production.

- (4) The concepts of privacy and the private sphere are ideological foundations of the modern class structure.

Marx says that capitalism's "principle of individualism" and a constitution of state and society that guarantees the existence of classes is the attempt "to plunge man back into the limitations of his private sphere" (Marx, 1843a, p. 147) and to thereby make him a "private human being" (Marx, 1843a, p. 148). If the private sphere in modern society is connected to the notion of private property, then it is an inherent foundation of the class antagonism between capital and work:

But labor, the subjective essence of private property as exclusion of property, and capital, objective labor as exclusion of labor, constitute private property as its developed state of contradiction-hence a dynamic relationship moving inexorably to its resolution (Marx, 1844, p. 99).

The capitalist mode of production is on the one hand based on the "socialization of labour" and "socially exploited and therefore communal means of production" (Marx, 1867, p. 928). This social dimension of capitalism is circumvented by private ownership of the means of production: "Private property, as the antithesis to social, collective property, exists only where the means of labour and the external conditions of labour belong to private individuals" (Marx, 1867, p. 927):

But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products, that is based on class antagonisms, on the exploitation of the many by the few" (Marx and Engels, 1846, p. 484).

- (5) There is an inherent connection of privacy, private property, and the patriarchal family.

Engels (1891, pp. 474, 480) has stressed the inherent connection of the private sphere with private property and the patriarchal family.

The Marxian analysis of the political economy of privacy was partly reflected in the works of Jürgen Habermas and Hannah Arendt.

Marx stresses that capitalism is based on a separation of the state and bourgeois society. The latter would be based on private property. Man:

[...] leads a double life. [...] In the political community he regards himself as communal being; but in civil society he is active as a private individual, treats other men as means, reduces himself to a means, and becomes the plaything of alien powers (Marx, 1843b, p. 225; see also: Marx, 1843a, p. 90).

This Marxian moment of analysis is a crucial element in Habermas' theory of the public sphere. During the course of the development of capitalism since the nineteenth century, the world of work and organization became a distinct sphere. With the rise of wage labour, industrialism, and the factory, the economy became to a certain degree disembedded from the private household (Habermas, 1989, pp. 152, 154; see also: Arendt, 1958, pp. 47, 68). Consumption became a central role of the private sphere:

On the other hand, the family now evolved even more into a consumer of income and leisure time, into the recipient of publicly guaranteed compensations and support services. Private autonomy was maintained not so much in functions of control as in functions of consumption (Habermas, 1989, p. 156).

Therefore, privacy is for Habermas an illusionary ideology – “pseudo-privacy” (Habermas, 1989, p. 157) – that in reality functions as community of consumers: “there arose the illusion of an intensified privacy in an interior domain whose scope had shrunk to compromise the conjugal family only insofar as it constituted a community of consumers” (Habermas, 1989, p. 156). A central role of the private sphere in capitalism is also that it is a sphere of leisure: “Leisure behavior supplies the key to the floodlit privacy of the new sphere, to the externalization of what is declared to be the inner life” (Habermas, 1989, p. 159). Expressed in other words, one can say that the role of the private sphere in capitalism as sphere of leisure and consumption that Habermas identifies is that it guarantees the reproduction of labour power so that it remains vital, productive, and exploitable. Habermas (1989, pp. 124-9) stresses that for Marx the inherent principle of universal accessibility of the public sphere is undermined by the facts that in capitalism private property of the means of production is controlled by capitalists and workers are excluded from this ownership. The separation of the private from the public realm obstructs “what the idea of the bourgeois public sphere promised” (Habermas, 1989, p. 125).

Hannah Arendt (1958) reflects in her work the Marxian notion that the liberal privacy concept is atomistic and alienates humans from their social essence. She stresses that sociality is a fundamental human condition. Privacy is for her in modern society “a sphere of intimacy” (Arendt, 1958, p. 38). For Arendt, the public realm is a sphere, where everything can be seen and heard by everybody (Arendt, 1958, p. 50). It is “the common world” that “gathers us together and yet prevents our falling over each other” (Arendt, 1958, p. 52). Privacy would be a sphere of deprivation, where humans are deprived of social relations and “the possibility of achieving something more permanent than life itself” (Arendt, 1958, p. 58). “The privation of privacy lies in the absence of others” (Arendt, 1958, p. 58). Arendt says that the relation between private and public is “manifest in its most elementary level in the question of private property” (Arendt, 1958, p. 61). In modern society, as a result of private property the public would have become a function of the private and the private the only common concern left, a flight from the outer world into intimacy (Arendt, 1958, p. 69). Labour and economic production, formerly part of private households, would have become public by being integrated into capitalist production.

The theories of Marx, Arendt, and Habermas have in common that they stress the importance of addressing the notions of privacy and the public by analyzing their inherent connection to the political economy of capitalism.

The connection between privacy and private property becomes apparent in countries like Switzerland, Liechtenstein, Monaco, or Austria that have a tradition of relative anonymity of bank accounts and transactions. Money as private property is seen as an aspect of privacy, about which no or only restricted information should be known to the public. In Switzerland, the bank secret is defined in the Federal Banking Act (§47). The Swiss Bankers Association sees bank anonymity as a form of “financial privacy” (www.swissbanking.org/en/home/qa-090313.htm) that needs to be protected and of “privacy in relation to financial income and assets” (www.swissbanking.org/en/home/dossier-bankkundengeheimnis/dossier-bankkundengeheimnis-themen-geheimnis.htm). In most countries, information about income and the profits of companies (except for public companies) is treated as a secret, a form of financial privacy. The problems of secret bank accounts and transactions and the intransparency of richness

and company are not only that secrecy can in the economy support tax evasion, black money, and money laundering, but that it masks wealth gaps. Financial privacy reflects the classical liberal account of privacy. So for example John Stuart Mill formulated a right of the propertied class to economic privacy as “the owner’s privacy against invasion” (Mill, 1965, p. 232). Economic privacy in capitalism (the right to keep information about income, profits, bank transactions secret) protects the rich, companies, and wealthy. The anonymity of wealth, high incomes, and profits makes income and wealth gaps between the rich and the poor invisible and thereby ideologically helps legitimatizing and upholding these gaps. It can therefore be considered an ideological mechanism that helps reproducing and deepening inequality.

Privacy is in modern societies an ideal rooted in the Enlightenment. The rise of capitalism resulted in the idea that the private sphere should be separated from the public sphere and not accessible for the public and that therefore autonomy and anonymity of the individual is needed in the private sphere. The rise of the idea of privacy in modern society is connected to the rise of the central ideal of the freedom of private ownership. Private ownership is the idea that humans have the right to own as much wealth as they want, as long as it is inherited or acquired through individual achievements. There is an antagonism between private ownership and social equity in modern society. How much and what exactly a person owns is treated as an aspect of privacy in contemporary society. To keep ownership structures secret is a measure of precaution against the public questioning or the political and individual attack against private ownership. Capitalism requires anonymity and privacy in order to function. But full privacy is also not possible in modern society because strangers enter social relations that require trust or enable exchange. Building trust requires knowing certain data about other persons. It is therefore checked with the help of surveillance procedures if a stranger can be trusted. Corporations have the aim of accumulating ever more capital. That is why they have an interest in knowing as much as possible about their workers (in order to control them) and the interests, tastes, and behaviours of their customers. This results in the surveillance of workers and consumers. Because markets are competitive, companies are also interested in monitoring competitors, which has given rise to the phenomenon of industrial espionage. The ideals of modernity (such as the freedom of ownership) also produce phenomena such as income and wealth inequality, poverty, unemployment, precarious living and working conditions. The establishment of trust, socio-economic differences, and corporate interests are three qualities of modernity that necessitate surveillance. Therefore, modernity on the one hand advances the ideal of a right to privacy, but on the other hand it must continuously advance surveillance that threatens to undermine privacy rights. An antagonism between privacy ideals and surveillance is therefore constitutive for capitalism.

Workplace surveillance harms employees because the slightest misbehaviour and resistance can be recorded and used for trying to lay them off. Consumer surveillance harms consumers because it enables companies to calculate assumptions about consumers that are error prone, can be used for discriminating between different consumers (based on, e.g. income or race) (Gandy, 2011), and exploits transaction data and consumer behaviour data that is created by activities of consumers (such as shopping, credit card use, internet use, etc.) for economic purposes (Fuchs, 2011a). Economic surveillance is deeply embedded into the antagonisms of capitalism.

But also state surveillance is deeply characteristic for modern society. On the one hand its prevalence can harm citizens by creating a culture of suspicion and fear, in which everybody is seen as an actual or potential criminal or terrorist and the likelihood to be mistaken for engaging in illegal activities is high, on the other hand state surveillance of companies and the rich could also be used for making power more transparent.

Liberal privacy discourse is highly individualistic, it is always focused on the individual and his/her freedoms. It separates public and private spheres. Privacy in capitalism can best be characterized as an antagonistic value that is one the one side upheld as a universal value for protecting private property, but is at the same time permanently undermined by corporate surveillance into the lives of workers and consumers for profit purposes. Capitalism protects privacy for the rich and companies, but at the same time legitimates privacy violations of consumers and citizens. It thereby undermines its own positing of privacy as universal value.

Given a critical analysis of the privacy concept, the question arises if the concept should best be abolished or if there is another way of coping with its limits. This question will be outlined in the concluding section.

5. Conclusion: an alternative privacy concept?

The discussion has shown that the major points of criticism of the modern privacy concept advanced by Marxian analysis are that privacy is frequently fetishized in liberal thought, thereby takes on an ideological character, and tries to mask negative consequences of capitalism. Marx and Engels have advanced four elements of the critique of the liberal privacy concept that were partly taken up by Arendt and Habermas:

- (1) privacy as atomism that advances;
- (2) possessive individualism that harms the public good;
- (3) legitimizes and reproduces the capitalist class structure; and
- (4) capitalist patriarchy.

Privacy in capitalism protects the rich, companies, and the wealthy. The anonymity of wealth, high incomes, and profits makes income and wealth gaps between the rich and the poor secrets and thereby ideologically helps legitimatizing and upholding these gaps. It can therefore be considered an ideological mechanism that helps reproducing and deepening inequality. It would nonetheless be a mistake to fully cancel off privacy rights and to dismiss them as bourgeois values.

I argue for going beyond a bourgeois notion of privacy and to advance a socialist notion of privacy that tries to strengthen the protection of consumers and citizens from corporate surveillance. Economic privacy is therefore posited as undesirable in those cases, where it protects the rich and capital from public accountability, but as desirable, where it tries to protect citizens from corporate surveillance. Public surveillance of the income of the rich and of companies and public mechanisms that make their wealth transparent are desirable for making wealth and income gaps in capitalism visible, whereas privacy protection for workers and consumers from corporate surveillance is also important. In a socialist privacy concept, existing liberal privacy values have therefore to be reversed. Whereas today we mainly find surveillance of the poor and of citizens who are not capital owners, a socialist privacy concept focuses on surveillance of capital and the rich in order to increase transparency and privacy protection

of consumers and workers. A socialist privacy concept conceives privacy as collective right of dominated and exploited groups that need to be protected from corporate domination that aims at gathering information about workers and consumers for accumulating capital, disciplining workers and consumers, and for increasing the productivity of capitalist production and advertising. The liberal conception and reality of privacy as individual right within capitalism protects the rich and the accumulation of ever more wealth from public knowledge. A socialist privacy concept as collective right of workers and consumers can protect humans from the misuse of their data by companies. The question therefore is: privacy for whom? Privacy for dominant groups in regard to secrecy of wealth and power can be problematic, whereas privacy at the bottom of the power pyramid for consumers and normal citizens can be a protection from dominant interests. Privacy rights should therefore be differentiated according to the position people and groups occupy in the power structure. The socialist privacy concept is a form of the RALC because it provides different zones of privacy for different kind of actors. The differentiation of privacy rights is based on the assumption that the powerless need to be protected from the powerful. Example measures for socialist privacy protection in the area of Internet policies are legal requirements that online advertising must always be based on opt-in options, the implementation and public support of corporate watchdog platforms, the advancement and public support of alternative non-commercial Internet platforms (Fuchs, 2011b).

Helen Nissenbaum (2010) defines privacy as contextual integrity, which is a heuristic that analyzes changes of information processes in specific contexts and flags departures from entrenched privacy practices as violations of contextual integrity. It then analyzes if these new practices have moral superiority and if the privacy violation is therefore morally legitimate (Nissenbaum, 2010, pp. 164, 182f). In relation to the economy, the concept of contextual integrity helps understanding that privacy plays another role in a context like friendship than in an employment relationship: sharing information about very personal details about your life (like intimacy, sexuality, health, etc.) with a partner or close friends must be judged with other norms than the sharing of the same information with a boss because the first relation is based on close affinity, trust and feelings of belonging together, whereas the second is based on an economic power relationship. Differentiated values are therefore needed for assessing privacy in both contexts. The concept of socialist privacy is a specific contextualization of privacy within the economic context – it is a contextualized privacy context, a double contextualization of privacy: On the one hand it takes into account the power relationships of the economy and on the other hand it must in the context of the modern economy take into account class relationships, i.e. the asymmetric power structure of the capitalist economy, in which employers and companies have the power to determine and control many aspects of the lives of workers and consumers. Given the power of companies in the capitalist economy, economic privacy needs to be contextualized in a way that protects consumers and workers from capitalist control and at the same time makes corporate interests and corporate power transparent.

Etzioni (1999) stresses that liberal privacy concepts typically focus on privacy invasions by the state, but ignore privacy invasions by companies. The contemporary undermining of public goods by overstressing privacy rights would not be caused by the state, but rather stem:

[...] from the quest for profit by some private companies. Indeed, I find that these corporations now regularly amass detailed accounts about many aspects of the personal lives of millions of individuals, profiles of the kind that until just a few years ago could be compiled only by the likes of the East German Stasi. [...] Consumers, employees, even patients and children have little protection from marketeers, insurance companies, bankers, and corporate surveillance (Etzioni, 1999, p. 9f).

The task of a socialist privacy conception is to go beyond the focus of privacy concepts as protection from state interference into private spheres, but to identify those cases, where political regulation is needed for the protection of the rights of consumers and workers.

It is time to break with the liberal tradition in privacy studies and to think about alternatives. The Swedish socialist philosopher Torbjörn Tännsjö (2010) stresses that liberal privacy concepts imply “that one cannot only own self and personal things, but also means of production” and that the consequence is “a very closed society, clogged because of the idea of business secret, bank privacy, etc.” (Tännsjö, 2010, p. 186). Tännsjö argues that power structures should be made transparent and not be able to hide themselves and operate secretly protected by privacy rights. He imagines based on utopian socialist ideas an open society that is democratic and fosters equality so that (Tännsjö, 2010, pp. 191-8) in a democratic socialist society, there is, as Tännsjö indicates, no need for keeping power structures secret and therefore no need for a liberal concept of privacy. However, this does in my view not mean that in a society that is shaped by participatory democracy, all forms of privacy vanish. There are some human acts and situations, such as defecation (Moore, 1984), in which humans tend to want to be alone. Many humans would both in a capitalist and a socialist society feel embarrassed having to defecate next to others, for example by using toilets that are arranged next to each other without separating walls. So solitude is not a pure ideology, but to a certain degree also a human need that should be guaranteed as long as it does not result in power structures that harm others. This means that it is necessary to question the liberal-capitalist privacy ideology, to struggle today for socialist privacy that protects workers and consumers, limits the right and possibility of keeping power structures secret and makes these structures transparent. In a qualitatively different society, we require a qualitatively different concept of privacy, but not the end of privacy. Torbjörn Tännsjö’s work is a powerful reminder that it is necessary not to idealize privacy, but to think about its contradictions and its relation to private property.

Note

1. Solove (2008) argues that the family, the body, sex, the home, and communications are contexts of privacy.

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An alternative
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