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A Contribution to Foundations of a Critical Theory of Privacy

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Social Networking Sites
in the Surveillance Society

A Contribution to Foundations of a Critical Theory of Privacy

Sebastian Seivignani

Abstract: *This paper provides a philosophical typology that is grounded in theories of the private and the public, in order to systematize the academic literature about privacy. A discussion of existing approaches to privacy shows that the literature about privacy assumes that there is a public/private dichotomy. In contrast, the task of this paper is to contribute to foundations of a critical and dialectical approach that wants to overcome the dichotomous conceptualization of the private and the public. Therefore, a critique of the privacy paradigm is contextualized with the help of the concepts of possessive individualism and private property.*

Keywords: privacy, private, public/private dichotomy, dialectical thinking, critical theory, private property, possessive individualism

Short biography of the author: Sebastian Seivignani studied media and communication, philosophy, and theology at the University of Salzburg. He has started working on his doctoral thesis, which focuses on the problem of privacy in (knowledge-based) capitalism. His research interests are: (critique of) the political economy of the media, ideology-theory, Frankfurt School theory, critical social theory, critical media and communication studies, dialectical philosophy, epistemology, the influence of emotions on social change. Sebastian is member of the Unified Theory of Information Research Group (UTI) and research associate in the project "Social Networking Sites in the Surveillance Society", funded by the Austrian Science Fund (FWF). He is participant in the working group "Public Policy and the Regulation of Surveillance" of the European Cooperation in Science and Technology Action "Living in Surveillance Societies" (COST Action IS0807). He is member of the editorial team of tripleC: Journal for a Global Sustainable Information Society.

1. Introduction

Within the literature about privacy studies, several authors have identified the importance of privacy paradoxes (e.g. Jaggar 1983; Cohen 1997; Demirović 2004; Etzioni 1999; 2005; Nissenbaum 2010; Barnes 2006; Norberg, Horne, and Horne 2007) The most frequently identified privacy paradox discussed is the gap between individuals' intentions to disclose private issues and individual's actual disclosure behaviours (Norberg, Horne, and Horne 2007; Barnes 2006). However, the paradox is not only relevant on the individual level. The paradox relates to antagonistic forces in society as well. For example, states want to protect their citizens' privacy and keep them at the same time under surveillance. Christian Fuchs argues that privacy is the paradox counter-part of the (mostly critically used) term "surveillance":

"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. This connection has been observed by a number of authors in surveillance studies" (Fuchs 2010a, 174f).

Another interesting paradox aspect of privacy is mentioned by Amitai Etzioni: Although privacy claims are usually made against the state and the public sphere, the most significant threats come from private organizations, thus the private sphere itself (Etzioni, 2005, 258). Nonetheless "several laws have been enacted that better protect financial privacy" (Etzioni, 2005, 259) of private organizations.

My epistemological interest is why these paradoxes exist. Is it because human life has a paradox character in general and by nature or is it because people have created these paradoxes themselves? Can people therefore recreate or even resolve paradoxical situations? The overall research question of this paper is how to establish a critical notion of privacy for people to know how to act in society in order to avoid such paradoxes. A critical concept of privacy should react to the privacy paradoxes not by balancing the different poles of values constituting them, but rather by considering possible variations of material conditions in order to make privacy imaginable as a non-antagonistic category.

In section 2 of this paper, the concept of the "Great Dichotomy" (Bobbio 1989) of the private and the public is introduced in order to develop a typology of how to relate the public with the private. Section 3 gives an overview and a brief discussion of how to define privacy. It is guided by a typology extracted from the discussion about a fundamental public/private distinction underlying modern political philosophy and theories of society. In section 4, the "Great Dichotomy" (Bobbio, 1989) typical for liberal thinking is challenged by introducing alternative political theory, which argues for overcoming the dichotomy by changing societal circumstances. The concluding section 5 explores what kind of privacy approach is missing in the existing literature.

Some ideas about foundations of a critical and dialectical approach to privacy are outlined. The conclusion refers to the critique of the public/private distinction; considers existing criticisms of the predominant notion of privacy; and redefines the values privacy should protect in human life. Therefore both the existing functions privacy should have and the remarked critique are being discussed and interpreted.

2. The Public/Private Distinction

Noberto Bobbio (1989) speaks of the distinction between the private sphere and the public sphere of life as a “Great Dichotomy”:

“A great dichotomy may correctly be spoken of when we are confronted with a distinction that is suitable (a) for dividing a world into two spheres which together are exhaustive in the sense that every element of that world is covered, and mutually exclusive in the sense that any element covered by the first term cannot simultaneously be covered by the second; and (b) for establishing a division that is not only comprehensive in the sense that all elements potentially or actually referred to by the discipline are covered by it, but also dominant in that it subsumes other distinctions and makes them secondary” (Bobbio 1989, 1f).

The distinction between these two spheres “reflects the situation of a group which distinguishes between what belongs to the group as a group and what belongs to single members or, more generally, between the society as a whole and other incidental, lesser groupings” (Bobbio 1989, 3). The distinction reminds of other fundamental differentiations, such as associations of equals and unequals, of law and contract, and of commutative and distributive justice (Bobbio 1989, 3-9). “The public/ private distinction, in short, is not unitary, but protean. It comprises, not a single paired opposition, but a complex family of them, neither mutually reducible nor wholly unrelated.” (Weintraub 1997, 2). Weintraub identifies two fundamental approaches that deal with the public/private distinction: One approach sees the distinction along the categories “political” and “apolitical”, the other deals with the private as the sphere of personal relations, such as intimacy and domesticity, contrasted by the public realm as the – impersonal, formal, and instrumental – realm of sociability (Weintraub 1997, 37).

Assuming that the distinction between private and public is not a fixed one, but rather cultural and historically diverse (e.g. Geuss, 2001), it is necessary to point out the specific and dominant social context of the present-day form of this distinction. In my opinion, the following “tendencies” (Weintraub 1997, 37) are the predominant ones and can be described as the specific capitalistic form of the public/private distinction. Critical theorists contextualize the dichotomy in the context of capitalistic society and liberal (political) philosophy (MacKinnon 1989; Pateman 1989; Jaggar 1983; Bobbio 1989; Habermas 1991; Geuss 2001; Demirovic 2004). In a specific historic situation, when capitalism emerged, the “public/private dichotomy reappeared in the form of the distinction between political society (of unequals) and economic society (of equals). From the point of view of the agent characteristic of each, a dis-

inction was made between the society of the citizen who attends to the public interest, and that of the bourgeois who takes care of his or her own private interests in competition or collaboration with other individuals" (Bobbio 1989, 5). A closer analysis of this development shows that the development of modern society, structured by the change from a limited economy of the household (*oikos*) to a dynamic and expanding economy (*chrestos*) (Altvater 1992, 74), became very self-interested, contractual, individualistic, competitive, and impersonal (Weintraub 1997, 13). The newly developing economy was based on private property owners that act as entrepreneurs – the bourgeois. At the same time, a notion of sovereignty as a complement to the atomistic individual emerged. The State embodied this need of sovereignty. However, this process resulted in a further differentiation, namely the establishment of a different notion of citizenship – the citizen as citizen. The self-image of the citizen reacts on individualistic bourgeois society and state sovereignty by being committed to the common good and the ideas of enlightenment (Weintraub 1997, 13f). The result was a distinction between three realms of society: civil society (embodied by the bourgeoisie), the state, and citizenship (embodied by the citizens). Based on these insights, we are able to distinguish between two major traditions that conceptualize privacy (Seubert 2010, 12f): The dominant liberal-individualistic tradition aiming at the protection of individuals. It refers to the self-image of the bourgeoisie and gives primacy to the private realm. In contrast, the Hegelian-communitarian understanding aims at the protection of specific social relations by society. It refers to the concept of the citizen and gives primacy to the public realm. In this context, the feminist theorist Alison M. Jaggar points out that in mainstream political theory "where the line between the two realms should be drawn has always been controversial for liberals; but they have never questioned that the line exists, that there is some private area of human life which should be beyond the scope of legal government regulation" (Jaggar 1983, 34; see also: Geuss 2001, 5; Wacks 2010, 33).

Wolfgang Hofkirchner (2006) identifies four general ways of relating things with each other. Examples for such pairs are the relation of subject and object, mind and nature, the self and the world, the one and the other, and the relation of the private and the public. Hofkirchner refers to these ways of relating two entities as reductionism, projectionism, dualism, and dialectics. In reductionistic notions, the one element A is reduced to the other element B; in projectionistic notions it is vice versa, so A is projected to B; in dualistic concepts the two elements are separated; and in a dialectic conception element A is seen in element B and the other way round at the same time. According to this philosophical framework, privacy can be understood in different ways. In all of them, the relation between individual and society is the general issue for theorizing privacy (Rössler 2006, 708) and is therefore incorporated in the typology:

A reductionistic concept of privacy seeks to exhaust the public as a solitary entity. Here public affairs are reduced to private affairs. This concept is related to the assumption that there is no such thing as a society, just individuals with self-interests. Such a concept strongly refers to the "specifically liberal ontological thesis that any

political good must be, finally, the good of some individual (or the sum of the goods of individuals), a moral view that individual interest ought to take priority over social interest" (Geuss 2001, 38). According to Bobbio (1989), this position can be termed the "primacy of privacy".

A projectionistic notion is the very opposite of a reductionistic concept. Projectionistic thinkers argue that privacy has to be a public mandate. This means, people decide in a public process what should be private. Totalitarian conceptions denote the extreme of this position, namely that no privacy should exist at all, that all human activities should be controlled by the public, the state, or another collective entity. In a weaker sense this position is connected with communitarian perspectives. Here, the private realm is seen as being only valuable, if and only if it is of public relevance. The value of the private realm is defined by a societal perspective. This position can be termed the "primacy of the public" (Bobbio 1989). Anita Allen highlights the difference between the reductionistic and the projectionistic understanding of privacy:

"For libertarians, who strongly oppose social formulations of the good, who believe that each person should be free to form and pursue his or her own good, and who thus seek to maximize private choice and privacy, the distinction between individual liberty and the common good matters little. For social conservatives, especially religious fundamentalists who would rely on the state to enforce their values – for instance, to suppress pornography – and who are willing to curtail both private choices and privacy, the difference between these two concepts is also of limited import." (Allen 2000, 256f)

The difference is insofar of limited importance, as both concepts seek to take the dichotomous character of the public/private interrelation back in order to highlight just one pole of the dichotomy.

Dualistic privacy concepts hold the view that privacy is something that has no direct interrelation to public affairs. Here the private is the very other of the public and both are irreducible aspects of life. Both spheres are constructed in an antipodal manner and each sphere battles against the particular other. Dualistic notions of privacy assume that there is a dichotomous status of the interrelation between the private and the public. No connection at all of the two spheres is assumed. They often try to weigh the spheres against each other; therefore, this conception refers to approaches combining the reductionistic and the projectionistic concepts in a syncretistic way.

Finally, a dialectical understanding says that privacy can only exist when the other pole, the public, exists at the same time and when the two realms interact and are interdependent. This concept seeks to overcome the dichotomy, but also wants to keep the particular aspects of each realm alive.

3. A Classification of Existing Literature: Reductionistic, Dualistic, and Projectionistic Notions of Privacy

In this section, I will give examples of the typology, which was developed in section 2, in order to show its validity. A selection of privacy approaches is classified. However, the typology can also be applied to approaches which are not discussed in this paper.

3.1. Reductionistic Privacy Concepts

In the context of privacy concepts that are *reductionistic* in character, as it will be shown, classical liberal approaches are very important. The starting point of the modern privacy debate was an article by Samuel D. Warren and Louis D. Brandeis published in 1890 (Warren and Brandeis 1984). The motive to write this article was an infringement during the wedding of Warren's daughter by the press. In this article, privacy is defined as the "right to be left alone" (Warren and Brandeis 1984, 76). Compared to later attempts to define privacy, Warren's and Brandeis' approach is not thoroughly elaborated. Nevertheless "the right to be left alone" is identical with the liberal core value of negative freedom (Rössler 2001, 20f) and as such it determines the subsequent theoretical work within this – liberal – tradition. Here the position of the primacy of the private is evident, also due the defensive origin of Warren's and Brandeis' concept as being opposed to publicity.

Alan F. Westin has given a now classical definition of privacy:

"Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others. Viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small group intimacy or, when among large groups, in a condition of anonymity or reserve" (Westin 1967, 7).

Westin focuses on the control of information, which makes him a prototypical proponent of "control-theories" of privacy (Tavani 2008, 142f), developed by authors like Rachels (1975) and Fried (1968). Most "control-theories" consider just one aspect of what is understood as privacy in everyday life. Tavani (2008, 135-141) provides a distinction between a) decisional privacy as non-interference to one's personal choice, b) physical privacy as non-intrusion in one's personal space, c) mental or psychological privacy as non-intrusion or non-interference in one's thoughts or personal identity, and d) informational privacy. Westin's control theory is applicable to a broader notion of privacy (Rössler 2001, 23). For Westin, privacy is solitude understood as being free from observations by others, it should advance intimacy as a firm basis for small group relationships and enable anonymity, which "refers to freedom from identification and from surveillance in public places and for public acts" (Margulis 2003, 412). Furthermore it should enable reserve, the opportunity to withdraw the self from others and to require recognition from others. Westin stresses the subjective factor of control (something *is seen* as privacy) and thereby neglects aspects of

society in his privacy concept. His notion of privacy is subjective and determined by stressing the role of individuals (or a group of individuals), not the role of society. In his understanding, privacy as a shield from society is important for the individual (or a group of individuals) to become autonomous. Only the autonomous individual can participate in the deduced public and societal realm. Therefore, Westin's control approach is reductionistic and gives primacy to the realm of the private.

Ruth Gavinson (1984) attempts "to vindicate the way most of us think and talk about privacy issues" (Gavinson 1984, 347). In her reconstruction of the understanding of privacy from everyday speech, Gavinson finds that privacy is a distinct issue and not reducible to other values (Gavinson 1984, 347) and gives a specific definition of the issue:

"Our interest in privacy, I argue, is related to our concern over our accessibility to others: the extent to which we are known to others, the extent to which others have physical access to us, and the extent to which we are the subject of others' attention" (Gavinson 1984, 347).

The focus on accessibility characterizes some theories, for example Anita Allen's feminist theory of privacy (2003). These are known as "access-theories" of privacy (Tavani 2008, 141f). Consequently, these approaches assume, as Gavinson suggests as a methodological starting point, "that an individual enjoys perfect privacy when he is completely inaccessible to others. This may be broken into three independent components: in perfect privacy no one has any information about X, no one pays any attention to X, and no one has physical access to X" (Gavinson 1984, 351). Gavinson (1984, 359) admits that in a society such a situation of perfect privacy is unreachable and not desirable, yet she nonetheless defines privacy from the perspective of a single individual. Her perspective contains normative (liberal-individualistic) premises, which she wanted to avoid in her descriptive approach in the first place. When analyzing the normative value of privacy, she assumes a balance between privacy and interaction: "Privacy thus cannot be said to be a value in the sense that the more people have of it, the better. In fact, the opposite may be true" (Gavinson 1984, 359). Gavinson argues that it is important to weigh privacy against society in order to find a balance, but a balance based on "a society that will not hinder individual attainment of the goals mentioned above. For this, society has to be liberal and pluralistic" (Gavinson 1984, 361). In this approach, privacy is important for individual growth, mental health, autonomy, creation and maintenance of human relations, and for leading meaningful lives. It is also important for society, albeit only indirectly: "Thus, to the extent that privacy is important for autonomy, it is important for democracy as well" (Gavinson 1984, 370). Here it becomes clear that Gavinson's access theory of privacy is a reductionistic approach: The public has a deduced status, only by means of the private.

Colin Bennett and Charles Raab describe the modern privacy paradigm in the following way:

Privacy "is based on a notion a boundary between the individual and other individuals, and between the individual and the state. It rests on notions of a distinction between the public and the private. It rests on the pervasive assumption of a civil society comprised of relatively autonomous individuals who need a modicum of privacy in order to fulfil the various roles of citizen in a liberal democratic state" (Bennett and Raab 2006, 4).

By referring to Warren/Brandeis and Westin they stress the importance of the privacy paradigm : "Privacy has an aesthetic and humanistic affinity with individual autonomy and dignity" (Bennett and Raab 2006, 6). They emphasize the importance of not only an individual-centred perspective (Bennett and Raab 2006, 11), but also of a formalistic approach to privacy: "privacy policy is based inevitably, therefore, on procedural, rather than substantive, tenets. It can put in place the mechanisms by which individuals can assert their own privacy interests and claims, if they so wish, and it can impose obligations on those who use personal data. But for the most part, the content of privacy rights and interests has to be defined by individuals themselves according to context" (Bennett and Raab 2006, 9). Thus their privacy approach is reductionist, focusing on individual autonomy and subjective choice secured by privacy. Public values, such as democracy, are deduced from this secured individual autonomy.

The definition by the social psychologist Irwin Altman sees privacy as the "selective control of access to the self or to one's group" (Altman 1976, 8). His approach "emphasizes several features of privacy: units of analysis which vary from individuals to groups, the dialectic nature of privacy, the nonmonotonic nature of privacy, privacy as a boundary regulation process, and privacy as a bidirectional process" (Altman 1976, 11). So his theory of privacy "is sufficiently comprehensive to be a general theory about the regulation of social interaction", as Stephen Margulis recognizes (2003, 419). Altman insists on privacy inherently being a social process and therefore considers its societal and cultural contexts (Margulis 2003, 419). However, he stresses an individual starting point and the necessity to shield the private from the public. This becomes clear when he lists three functions of privacy regulation: a) an interpersonal function of self-definition by regulating self-other-boundaries; b) a function of privacy concerning the interface of the self and the social world in order to achieve self-evaluation: "Privacy therefore provides the opportunity for a person to assimilate experiences and information, and to examine possible future relationships with others" (Altman 1979, 25); and c) the function of self-identity to achieve personal autonomy: "For a person to function effectively in interaction with others requires some understanding of what the self is, where it ends and begins, when self-interest and self-expression can be exhibited" (Altman 1979, 26). For Altman, privacy is directed against the public in order to protect the individual. Therefore his approach is amongst those giving primacy to the private.

Raymond Wacks challenges the in-determination of Altman's classical privacy definition of the "selective control of access to the self or to one's group" (Altman 1976,

8). Wacks notes that Altman does not discuss what specific privacy subjects he refers to: "To regard privacy as a claim (or, the more so, as a right) not only presumes the value of privacy, but fails to define its content. It would, moreover, include the use or disclosure of any information about an individual" (Wacks 2010, 40f). Wacks applies this critique to the whole control theory of privacy. In fact, it is the "freedom to chose privacy" (Wacks 2010, 41) and not a determination of the content of privacy what control theories deal with. Privacy is what *is subjective seen* as privacy. "It is, in other words, a definition which presupposes the value of privacy" (Wacks 2010, 41). In contrary, access theories of privacy try to characterize privacy in a substantial manner (Wacks 2010, 42), but are questionable as well. They disregard the context within which a privacy issue is formulated in order to concentrate on defining the objective quality of privacy (something *is objective* privacy): "It is a distortion to describe every instance of the dissemination of information about an individual as a loss of privacy" (Wacks 2010, 42). Wacks tries to meet the objections against a loss of the substantial meaning of privacy and of the disrespect for the individual's ability to define privacy in certain contexts by combining aspects of both theories. A definition "should refer both to the quality of the information and to the reasonable expectations of the individual concerning its use" (Wacks 2010, 47). In a similar way, Jeffrey Reiman (1976), James Moor (1997), and Herbert T. Tavani (2007; 2008, 144ff) advance privacy concepts, which combine subjective and objective elements. Subjective elements of control are clearly not public and therefore private, because they leave the decision if something is private at the side of the individual, not at the side of the public. The other way round, objective elements of access denote a realm of privacy, which is not in disposal of the individual's choice by all means. A public agreement on what should be private is not excluded by access theories. Wack's objection to objective definitions in access theories of privacy can be seen as an attenuation of public and collective definitions of privacy. In pursuit of classifying Wacks' approach in context of the developed typology, one must also discuss his general assumptions about the role of privacy in society: "In any event, it is clear that at the core of our concern to protect privacy lies a conception of the individual's relationship with society" (Wacks 2010, 31). In this context, Wacks sees the approach by John Stuart Mill as a still up to date "litmus test" (Wacks 2010, 34) for privacy issues. Wacks discusses in his book, in which cases it is right to intrude the private sphere and when it is right to repel the public interest. He tends to emphasize the private sphere in relation to electronic surveillance and media investigation. However, concerning the public/private dichotomy, he claims that only one thing is clear: "The quest for a just equilibrium will never end" (Wacks 2010, 108). Wacks advances a reductionist approach in the liberal tradition that affirms the dichotomy between the public and the private, while seeing the private sphere as the core element of society and shielding it from public overtakes. Nevertheless, there are also dualistic elements within his approach when he confirms the perpetuity of the dichotomy, stresses the task to balance privacy with public affords, and wants to avoid pure subjectivism.

3.2. Projectionistic Privacy Concepts

Projectionistic notions of privacy can be interpreted as being counter movements directed against the predominance of classical liberal theory, which presents privacy as a necessary shield from the public or the collective. Projectionistic notions want to stress just these public or collective aspects of privacy. Helen Nissenbaum (2010) provides a contextual understanding of privacy as contextual integrity and privacy as appropriate informational flow (Nissenbaum 2010, 127). She says: "What people care most about is not simply restricting the flow of information but ensuring that it flows appropriately, and an account of appropriate flow is given here through the framework of contextual integrity" (Nissenbaum 2010, 1). Privacy as contextual integrity is

"a complex, delicate web of constraints on the flow of personal information that itself brings balance to multiple spheres of social and political life. Systems and practices that radically disturb this web of constraints are not merely threatening a marginal newcomer to the stage of values and rights, but potentially tearing at the very fabric of social and political life" (Nissenbaum 2010, 128).

Contextual integrity "is offered as a benchmark for privacy, yielding assessments that reflect common sentiment and map well onto judgments that privacy has been violated" (Nissenbaum 2010, 150). However, when privacy is defined as appropriate flow of communication in a specific context, a problem occurs: "If conformity with pre-existing informational norms is a measure of contextual integrity, then any new practice that contravenes entrenched norms is flagged as problematic" (Nissenbaum 2010, 159). On the one hand, the framework of contextual integrity indicates the challenges of present-day privacy issues precisely. This is its seismographic advantage. On the other hand, the approach has a conservative bias. It expounds any changes – such as determined by new information and communication technologies – *prima facie* as problematic. Therefore, Nissenbaum advances criteria that can be used for judging if a change is good or not:

"The approach I recommend here is to compare entrenched normative practices against novel alternatives or competing practices on the basis of how effective each is in supporting, achieving, or promoting relevant contextual values" (Nissenbaum 2010, 166).

However, Nissenbaum affirms the normative liberal understanding of privacy within this procedure. In fact, "the relevant contextual values", which are used to decide if a change of information-flow is desirable or not, are liberal values (Nissenbaum 2010, 165): Nissenbaum's criteria are always retrieved from pre-existing contexts determined by the liberal-capitalistic organization of society. Such a critique is exclusively immanent, cannot transcend society towards a new quality of living together. Moreover, the approach of contextual integrity does not consider the fact that particular contexts have different degrees of importance. For example, the economic sphere of society is about producing the basic means of life through work. These practices constitute a quite powerful context of life, and therefore the context's

inherent norms, such as competitive individualism may triumph over other norms of other contexts that are not so essential for present-day human life. Moreover, Nissenbaum confirms the general presumption that there is a strict dichotomy of the public quality and the private quality of life (Nissenbaum 2010, 90, 124). In my opinion, Nissenbaum's approach is a great tool for describing and working out the antagonisms of propagated values and counter-running practices concerning privacy, but it is not a sound way to evaluate changes.

Nissenbaum's approach of contextual integrity can be seen as an elaborated projectionistic position, because the private is defined by a contextual perspective. Contextual integrity is a theoretical construct that seeks to consider both, the private realm and the public realm. What privacy means within her approach is a matter of social or public agreement-processes and in no case an inherently private matter of the individual.

Amitai Etzioni's (1999; 2005) approach is also projectionistic. Etzioni bears in mind that "privacy is a good, but hardly the only one; and privacy must be and is regularly weighed against many other goods" (Etzioni 2005, 253). Therefore privacy "cannot be extended to the point that it undermines the common good; conversely, duties set to maintain social order cannot be expanded to the point that they destroy privacy" (Etzioni 1999, 198f). However, he agrees to a large extent with the arguments in favour of privacy that one finds in the liberal literature (Etzioni 2005, 260). He says that privacy is important for a free and good society, that it is an important element for the opinion-making process and the precondition of its continuation in public, that it boosts innovations, allows individuals or groups to deviate from mainstream lifestyle and positions. "However, privacy needs to find its place among a whole host of values that are dear to us and which are not fully compatible" (Etzioni 2005, 260). The core idea of Etzioni's notion of privacy is to establish less privacy in order to allow communal measures of scrutiny – such as communal recognition, approbation, and censure (Etzioni 2005, 257). In this context he says that to deal best with corresponding dangers is to shore up the "political system citizen education, the free press, and so on – all measures that will protect our democracy, privacy included, rather than merely, or even mainly, privacy" (Etzioni 2005, 260). In contrast to liberal approaches, the communitarian idea requires a substantial notion of privacy. This means that the content of the term "privacy" should be defined. In Etzioni, the content is defined as "mandated privacy" from a public perspective of moral laws.

So privacy is viewed "as the realm in which an actor (a person or a group, such as a couple) can legitimately act without disclosure and accountability to others. Privacy thus is a societal license that exempts a category of acts (including thoughts and emotions) from communal, public, and governmental scrutiny" (Etzioni 1999, 196).

Etzioni's focus on society suggests classifying his notion of privacy as one that gives primacy to the realm of the public in the private/public relation. This is expressed

clearly, when he speaks about privacy – indeed as an important value among others – as a social license.

John Gilliom sees the problem of privacy as a “hyper-individualist understanding of life and society” (Gilliom 2001, 121). This understanding dates from the liberal idea of an autonomous natural state of men. “From this starting point, an analysis can proceed to say that a violation of privacy has occurred when the individual’s solitude, anonymity, or secrecy is violated” (Gilliom 2001, 121). And from “this perspective, ‘privacy’ is something that can be restored once the cameras or computers are turned off” (Gilliom 2001, 122). Gilliom provides two critical arguments: first he questions the “right to privacy framework” (Gilliom 2001, 119), which is individualistic and therefore secondly he considers the mainstream privacy discourse as being fairly exclusive: “To the extent that the institutionalized mainstream languages of surveillance and privacy appear nonsensical to citizens like this, or fail to recognize their concerns, the languages work as vehicles of exclusion” (Gilliom 2001, 124). According to Gilliom, for studying the real needs and privacy concerns of people a different perspective is needed. It is “to focus on context, power, and conflict – to study the powers of surveillance as particular episodes of political domination and struggles and not as successive chapters in the legal history of the right of privacy” (Gilliom 2001, 119). This means to break the individualistic perspective and to take the perspective of the “primacy of the public”.

3.3. Dualistic Privacy Concepts

Dualistic notions of privacy seek to achieve a balance between projectionistic and reductionistic notions of privacy. They are often informed by arguments of reductionistic and projectionistic approaches and cannot or do not want to resolve the tension theoretically. They rather delegate the question which degree of private life or public life is desirable to political processes. Dualistic concepts of privacy can hardly be found in the research literature as distinctive approaches. However, as we have seen, on the one hand there are reductionistic approaches that are close to the dualistic concept. An example is the approach of Wacks (2010). On the other hand, as we have seen as well, there are projectionistic approaches that are close to the dualistic notion of privacy. Helen Nissenbaum’s (2010) approach is an example.

4. Capitalism and the Critique of the Public/Private Distinction

This section presents theories that are sceptical of the relevance of the private/public-dichotomy in general. It is critical of liberal pitfalls and aims at contributing to the elimination, preservation, and qualitative transformation of the dichotomy of the concepts of privacy and the public. It also wants to contribute to the establishment of a *dialectical and critical* concept of privacy.

Raymond Geuss is sceptical if the distinction between public and private is valuable in general: “There is no such thing as the public/private distinction, or, at any rate, it is a deep mistake to think that there is a single substantive distinction here that can

be made to do any real philosophical or political work” (Geuss 2001, 106). We cannot take the dichotomy as given, but rather “first we must ask what this purported distinction is for, that is, why we want to make it at all” (Geuss 2001, 107; see also 113f).

Therefore, the concept of privacy should be contextualized by relating it to the foundational principles of contemporary society. Crawford Macpherson (1962) has in this context spoken of “possessive individualism” as the central ideology of modern society. With the rise of capitalism and the differentiation of society, the “relation of ownership, having become for more and more men the critically important relation determining their actual freedom and actual prospect of realizing their full potentialities, was read back into the nature of the individual” (Macpherson 1962, 3). All core ideas of liberalism are determined by this interpretation (Macpherson 1962, 3). Macpherson extracts from an interpretative analysis (Macpherson 1962, 4-8) of the most important liberal thinkers, from Hobbes to Locke, a framework of distinct premises. He termed this framework “possessive individualism” and noted that it will be influential as long as capitalism and free market economy exist (Macpherson 1962, 8). The principle of competition is predominant in all spheres of human life within capitalistic societies. Macpherson outlines the concept of possessive individualism as a complex of postulates (Macpherson 1962, 263f), derived from a negative notion of freedom, as freedom from man’s dependency on other men. The individual as “proprietor of his own person and capacities” (Macpherson 1962, 263) should, according to the ideology of possessive individualism, be free to choose relations of dependency in regard of its own interests. Therefore, the individuals are free to sell their own labour capacity to others on markets. “Possessive individualism” is a specific way of thinking and self-conception and makes individuals’ behaviour consistent with the structural requirements of contemporary market-based society. The ideology of the individual “as proprietors of themselves” (Macpherson 1962, 264) seems to be adequate to act within such structures. As a result, people perceive no alternative to this ideology.

The possessive individualistic ideology underlying contemporary society is related to the class structure of this society because it contains the individual freedom to sell and buy labour capacity on markets. Contemporary society is still a class society (Fuchs 2010b). Aside from the question of class consciousness, society is still shaped by a structural antagonism between exploiters of surplus value and exploited groups who produce surplus value (Fuchs 2010b). Exploitation is a societal relation, in which one group holds the power to force others to work for them and to produce goods and value for them. The right of private property ensures this situation in capitalism by coercive means (Römer 1978). Within the ideology of possessive individualism, the right to private property is worth to protect because it is derived from the value of (negative) freedom. In capitalism, the right to private property enables the appropriation and accumulation of value that is produced by others. Karl Marx characterized in this context the capitalist employer:

The surplus-value is his property; it, has never belonged to anyone else. If he advances it for the purposes of production, the advances made come from his own funds, exactly as on the day when he first entered the market. The fact that on this occasion the funds are derived from the unpaid labour of his workers makes absolutely no difference. If worker B is paid out of the surplus-value which worker A produced, then, in the first place, A furnished that surplus-value without having the fair price of his commodity cut by even a farthing, and, in the second place, the transaction is no concern of B's whatever. What B claims, and has a right to claim, is that the capitalist should pay him the value of his labour-power (Marx 1976, 732).

Within liberal theory and under capitalistic circumstances of structural exploitation, the distinction between the public and the private hinders public discourse about the origin of the wealth of property owners and of social inequality. "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. But according to whether these private individuals are workers or non-workers, private property has a different character" (Marx 1976, 927). This crucial "different character" is not at public issue because *any* kind of private property seems to be an important expression of individual autonomy and freedom.

According to the German philosopher Alex Demirović, the distinction between the public and the private maintains possessive individualism and capitalistic class society. He views the relation between the public and the private realm "as a symbolic dispositif, as a symbolic device, a symbolic ordering, that organizes a specific representation of societal space" (Demirović 2004) in order to protect class hegemony. Within an atomistic society based on competitive individuals (Macpherson 1962, 271), people "feel overtaxed by career demands; they lack free time and recreation; and they feel under tremendous pressure to conform in their public expression and behaviour, and in their work life. They demand, as a right, that the state and public not intervene in all private decisions" (Demirović 2004). As an effect, they call for privacy. They demand a realm, where they want to be left alone and do not have to face the pressure of everyday life and work in capitalism. But for what purpose do they want to have privacy? In competitive societies, privacy serves the ability to compete "and with preventing access to knowledge about me that can be of use to my competitors. Thus, if I am bidding against an economic rival, it might make a big difference to me whether I was able to keep the actual state of my finances [...] 'secret'" (Geuss 2001, 88). Class hegemony can be described as a situation, in which the subjective privacy interests of the exploited accord with the privacy interests of the exploiters. But one group, the bourgeois proprietors, benefits much more than the other group. The need of privacy and its reductionistic validity claim is used for maintaining domination structures in capitalism.

However, projectionistic concepts that stress the importance of the public realm compared to the private realm are problematic since they do not challenge the whole

public/private setting. The communitarian concept of “mandated privacy”, the feminist critique of the private/public distinction, which “tended to look upon privacy with disfavour” (Allen 2000, 456), both hold the view that the private should become political or public and therefore become changeable. Such an approach “screens out the possible negative effects of certain forms of regulation on personal autonomy, and deprives us of the possibility of invoking the symbolic and normative surplus of privacy discourse to protect against overregulation and paternalism” (Cohen 2002, 37). Projectionistic notions of privacy are important because they can help making privacy-related domination structures public and challenging the predominant reductionistic notion of privacy; “but then it is a question of a means toward emancipation, and not the end itself” (Demirović 2004). Real emancipation would be the transformation of social relations in order to overcome the capitalist character of the dichotomy.

5. Conclusion: Towards A Critical and Dialectical Understanding of Privacy

Up to this point, I provided the following line of argumentation:

- The dichotomous character of the public and the private is not given by nature.
- Therefore the (capitalistic) context of the dichotomy is crucial. This context is a) determined by a possessive individualistic society. In addition, the context of the dichotomy is b) determined by class society and the right to force individuals to become wage earners in order to survive.
- The public/private distinction is used to maintain inequality and the hegemony of class domination. As a consequence, approaches to privacy that alleged “to run along the symbolic axis from private to public” (Demirović 2004) are insufficient. In this section, I draw some conclusions about the notion of privacy.

In the literature, three notions of privacy with distinctive focus and distinctive aims can be found. First, it is assumed that privacy should protect the individual; second, it is assumed that privacy should protect interpersonal relations, and third, it is assumed that privacy is aimed at achieving societal values. Which concrete values are meant on the three levels depends on the position an approach has taken in the public/private framework that was outlined in section two of this paper. Every level – individual, interpersonal relations and society – can be examined either from the private pole or the public pole, and of course combinations are possible. The position, which gives primacy to the private, can be seen as being the predominant one. The articulated critique of the concept of privacy is mainly directed against this position. If privacy is related with the values of autonomy (Fried 1968; Rachels 1975; Reiman 1976; Altman 1976; Gavinson 1984; Rössler 2001; Bennett/Raab 2006) and freedom (Warren and Brandeis 1984; Westin 1967) on the individual level, it is mainly understood as autonomy from society, autonomy to choose, and freedom from intrusion by the state and society. In fact, this notion of individual privacy influences the notion of privacy on the other two levels. On the interpersonal level, when authors speak about intimacy (Westin 1967) and other social relationships, what is meant is the ability to

engage in contract relations. They assume that an individual is enabled by privacy to enter relationships with others. Social relations and the role of privacy therein have a derived status; derived from the individual level. Many approaches that stress the value of privacy concerning societal aims (Regan 1996; 2002; Westin 2003), such as wealth, democracy, freedom of speech, freedom of polls, freedom of opinion, difference, and pluralism, also based their understanding on an individualistic notion of privacy. Therefore, these approaches have a limited notion of societal issues: for them, wealth is always connected to the market economy, democracy means liberal democracy and representative democracy, difference and pluralism among individuals tends to get along without concepts of societal unity in their view. The direction of the academic discourse of privacy has been determined since its very beginning by Warren's and Brandeis' "right to be left alone" (1984), which is in fact the right of negative freedom. Moreover, "the positive meaning of 'private' emerged precisely in reference to the concept of free power of control over property that functioned in capitalist fashion" (Habermas 1991, 74).

The "privacy paradigm" (Gilliom 2001, 7) can be criticized in several respects. First, one can say that privacy is an *individualistic* concept (Lyon 1994; 2007; Etzioni 1999; Gilliom 2001), which does not, or only indirectly via the assumption of a conglomerate of individuals, consider society as important. This critical argument has been advanced by projectionistic theorists within the field of privacy studies.

Second, certain privacy concepts are being criticized as being *formalistic*. They are criticized for handing over control of what privacy is and of what it should protect to the arbitrary decisions of the individuals. While there is a critique of subjective control theories of privacy that cannot name specific and mandatory values, for example notions of good life or freedom from domination that should be protected by privacy (Wacks 2010, 41), there is a more fundamental critique of liberal and reductionistic approaches. In this context, Jaggar states that "because of their respect for individual judgment, liberal philosophers seek to develop a political theory that is independent of any substantive claims about the nature of the good life or of human happiness or fulfilment" (Jaggar 1983, 174). Consequently, liberalism tends to accept given purposes of privacy in society and has therefore a conservative bias (see for example the discussion of Nissenbaum 2010 in section 3). Formalistic approaches argue that the value of certain ideas is given by these ideas themselves or by the holders of these ideas and not by larger contexts or collective values. Formalistic understandings of the privacy concepts especially negate a connection of the privacy concept to collective values, such as the good society for all.

Third, there is a criticism of the *property-centred* quality of privacy concepts. In this context, Amitai Etzioni gives an overview of the legal practice concerning a right to privacy, while stressing the concept's origin in Locke's theory and its alliance with the private property concept (Etzioni 1999, 194). David Lyon characterizes this understanding of privacy as being based on "self-possessing, autonomous individualism" (Lyon 1994, 196), a concept derived from Alvin Gouldner (1976): the liberal "concep-

tion of privacy connects neatly with private property” (Lyon 1994, 186). For Lyon, the property-centred quality of privacy is strongly connected with exclusion.

Fourth, the *exclusive character* of the privacy paradigm is criticized. It is exclusive because it protects the privileged: “Those who are aware that data protection and privacy laws exist, and have the resources and motivation to take advantage of them, may do so. Those with entrepreneurial initiative may further take up arms against commercial surveillance by declaring property rights over ‘their’ personal data” (Lyon 1994, 193). So “self-protection is only available to those who can negotiate it” (Lyon 1996, 196). A different aspect of exclusion through privacy is mentioned by John Gilliom: “To the extent that the institutionalized mainstream languages of surveillance and privacy appear nonsensical to citizens like this, or fail to recognize their concerns, the languages work as vehicles of exclusion” (Gilliom 2001, 124). For studying the real needs and privacy concerns of people, a different perspective is needed according to Gilliom. It is “to focus on context, power, and conflict – to study the powers of surveillance as particular episodes of political domination and struggles and not as successive chapters in the legal history of the right of privacy” (Gilliom 2001, 119).

According to these critical arguments within privacy and surveillance studies, the privacy paradigm is individualistic, formalistic, property-centred, and exclusive. According to the critique in section 4, the distinction between the public and the private is an ideology that ensures the hegemony of the class of private property owners. Both critiques are related, insofar as the critique mentioned in privacy and surveillance studies can be seen as an expression of the critique of the public/private dichotomy that is characteristic for capitalism. Moreover, the meta-critique of section 4 shows the systematic interrelation between the critical arguments in privacy and surveillance studies. Possessive individualism, formalism, and social exclusion are characteristics of capitalism. All approaches that see privacy as just being in peril or under threat are insufficient because they do not question the dichotomous status of the private and the public. To establish a different notion of privacy is therefore an important and a still remaining task. In order to show this importance a concrete example may be useful.

On the Internet, while using social networking sites such as Facebook, users want to protect their privacy; however they disclose a lot of personal or intimate information (party or holiday pictures, information of their relationship status etc.) in order to benefit from Facebook’s attractive offer for socialising. One could argue that it is the decision of the user to disclose personal information to his friends and to the public; but this argument does not realize the antagonistic situation that users are entangled in when using social networking sites: Facebook, a commercial provider, is able to sell the personal information of its user to advertisers; in fact, Facebook has to do so because targeted advertising is its business model and it therefore needs to accumulate capital by commodifying user data in order to exist. Therefore, personal information is given to third parties without decision rights and control by the Facebook users (Fuchs 2011). The specific situation of commercial social networking sites

contradicts the users' need of privacy. Privacy rights everyone should have in modern society are contradicted by the capitalistic structure of society. Moreover, liberalism and civil rights discourse including the right to privacy should not be seen as linear processes of emancipation, rather closely connected to de-emancipation, domination and inequality (Losurdo 2010). The problem lies within civil rights and the right to privacy itself. Privacy hinders the universalizing of civil rights in society by protecting the right to have others work for a company that forces them to create wealth they do not own themselves, but that is owned as private property by others.

What is exactly sold to advertisers by Facebook (see for the following argument Fuchs 2010b)? It is the work that people do on the Internet, while spending time on social networking sites, creating personal information, talking about their interests, desires and so on. The owners of commercial social networking sites appropriate this work in order to accumulate profit. The pursuit of profit is seen as a private right in capitalism. At the same time, the situation that hinders privacy (the commercial character of organization, the capitalist form of labour) preconditions privacy as the right to make others work in ways that expropriate the fruits of their labour and make these fruits the private property of others.

Carol Pateman suggests "a dialectical perspective upon social life as an alternative to the dichotomies and oppositions of patriarchal-liberalism" (Pateman 1989, 135). As a consequence, such an alternative perspective that deals with the distinction between the public and the private requires an alternative notion of privacy. A dialectical approach does not "replace opposition by negation" of either the private or the public (Pateman 1989, 135) and also does not aim at "harmony and identification" (Pateman 1989, 136) within given society. Such a critical and dialectical concept seeks to establish a "differentiated social order within which the various dimensions are distinct but not separate or opposed, and which rests on a social conception of individuality" (Pateman 1989, 136). A critical and dialectical understanding of privacy should assume that society needs to sublimate the dichotomous character of the relations between the private and the public by changing the context of this relation – society. Hegel (1991, 156) meant by the concept of sublation (*Aufhebung*) three processes: 1) elimination, 2) preservation, 3) the emergence of new qualities. The property-centred and individualistic form of privacy should be eliminated. Autonomy and freedom of the individual as main functions of privacy should be preserved in an emerging new quality of privacy, which is not possible under given capitalist conditions. Freedom is then not understood as freedom *from* authority, rather than as social freedom and its conditions. The new quality of privacy in society needs to get rid of the existence of the right to appropriate others' labour. This problematic nexus should be displaced with a notion of privacy coupled with a reconciliation of interests, which requires overcoming the class divisions of society. In my opinion, contributing to the analysis of the dominative character of privacy and establishing foundations of a critical concept of privacy is the most important task of critical privacy studies.

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