Private Sphere in the Age of Digital Communication: Some Normative Aspects of Our Right to Privacy[1]

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Abstract

Examining the interpretations on the "U.S. observation case," I am trying to answer the question of which contemporary theory may serve as the adequate context for telling the story of the birth of our right to privacy and the modern power structures endeavoring to oppress this right. Relying on the relevant literature, I have attempted to reconstruct two possible theories in light of the strength of the relationship between privacy and power: the paradigm rooted in the sociology of work; and one judicial approach based on human dignity. The analysis of the two privacy paradigms in contrast with each other highlights their advantages and disadvantages. I also attempt to outline normative points of view relevant when analyzing the relationship between power and privacy in the digital age.

Keywords: privacy, digital communication, sociology of work, human dignity, social philosophy

The Approach of the Sociology of Work and the "Information Panopticon"

My article aims to answer the question of how the normative basis of the individual's right to privacy can be grasped in the present situation when it is endangered by new threats caused by new digital techniques. The article examines and reconstructs two aspects of this problem without formulating a coherent normative theory on the right to privacy. The first one is that of the perspective of organization sociology or sociology of work —reconstructed here based on William S. Brown's and Shoshana Zuboff's works—which tries to comprehend the characteristics of the new power structure that poses threats

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to the private sphere. The other one is the legal perspective holding up the concept of human dignity in the first place, which is reconstructed based on Avishai Margalit's analyses and using David Alan Sklansky's writings. The two different viewpoints thus reconstructed are then contrasted to each other. Although the article does not aim to reduce this visible tension, it argues that the description of this theoretical controversy can be useful when elaborating on the normative thinking on the private sphere.

In the literature, organizational sociology and the sociology of work—the study of a power structure based on the control of the labor force, as well as work privacy—go back to a long tradition. William S. Brown (1996), a management researcher of the Massachusetts Babson College, thinks that the history of U.S. workplaces can be described as a process during which the power exercised by the employer is based less and less on the personal authority of the employer or the cooperation stipulated in personal agreements (p. 1238). It has been a well-established view in labor organization, at least from the early studies of Winslow Taylor, that "management" means the exercise of hegemony over the employees (and in many cases, over their lifestyles too). In his 1938 work, Chester Barnard described the control over people as a peculiar bilateral "cooperation." According to this theory, as opposed to management disposing over the technical apparatus serving the control of lifestyles, there appears a labor force for which adjustment may mean the acceptance of impersonal relationships or even self-denial. Thus, the modern approach to management also requires a change in traditional "employees' virtues": *conformity* and *compliance* squeeze out creativity and the venturing spirit.

In Brown's opinion, the need for self-expression and free association demonstrated in the movements of 1968 did not lead to any radical changes in the power structures at work. In the seventies, certain changes took place in the composition of corporate management. For instance, there was a growth in the number and proportion of female managers. However, the hegemony of management was still based on the depersonalization of the employees, on coercing their adjustment and compliance. In Brown's (1996) opinion, it was only from the 1990s that the spread of such a level of individualism could be experienced that shatters the acceptance of the general norms of self-abnegation from the part of the employees and the employers and which increases the legal concerns about "work privacy" (p. 1238).

However, Brown has to acknowledge that in the same period, work organization based on the control of employees underwent significant technical development. He quotes three examples. On the one hand, the example of those companies which even control the communication of their employees. The most extreme example was that of the company

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involved in Alaskan pipeline systems called Alyeska, the management of which checked the phone conversations and e-mail messages of one of the critics of the company by using an observation program, and installed interception equipment near his house. In another part of the text, he relies on the 1994 *Fortune 200* research project, which showed that as many as 72% of the employees were subjected to medical examinations or physical tests by their employers in the period when the job offer was valid but the contract had not yet been signed. Brown draws the reader's attention to "genetic pre-screening" of potential employees being a widespread practice in this period. The novelty of this situation is that the potential employee is often not hired because they cannot fulfill the requirements of the job—not due to their illness but because his employment may incur potential future financial sacrifice for the company, given the employee's biological features (Brown, 1996, p. 1240). The third important example that Brown quotes is the case of the Citicorp company. It developed the first computerized system in the eighties, which aggregates how many minutes an employee spends talking on the phone, starting financial services, how much time they assign to a work process, and so forth. For each employee, the system generates an electronic social text that gives feedback to the employer on the performance of the individual in question, and on the individual characteristic features and habits cause the decrease in productivity (Brown, 1996, p. 1242).

In Brown's opinion, the history of modern U.S. corporations will become complete when management is not content with the direct control over the work activities anymore—in other words, when using modern technology, the control over personal relationships, private habits, physical and mental conditions, which potentially affect productivity and loyalty, becomes possible. New technologies are generally not built on the direct, personal monitoring of the employees. The employees are able to adjust to a large extent exactly because they are not aware of when they are observed and which activities will be included in the comprehensive reports written about them. This is why Brown accepts the line of thought of Shoshana Zuboff, who describes the development of an "information panopticon" built on total observation in the case of Western corporations (Zuboff, 1988).

The Right to Privacy

According to Brown, however, the development of the individual's right to privacy is a process that is parallel to the building of the information panopticon. Brown (1996) does not venture to describe, from a historical and sociological aspect, the "in-depth cultural transformation"[2] during which the individual in the modern sense has evolved, one who does

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[2] Hans Joas (2011) believes that it is only through the adequate historical and sociological

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not feel free if they cannot sometimes withdraw from public spaces. He is more interested in is how the right to privacy has been shaped in theoretical thinking and how it appeared in the U.S. legal tradition. The first texts that discuss the right to privacy can be found in the analyses of the nature of tyranny by Plato, Aristotle, Cicero, Tacitus, and Justinian I. In the history of modern philosophy, he finds Locke, Rousseau, and Montesquieu the most influential thinkers who made "privacy" a subject of theoretical examination. These philosophers directly influenced American legal thinking through the Founding Fathers. Firstly, the works of John Adams, Jefferson, and Madison; and secondly, the debates on politics and constitutional law in the Federalist Papers that witness the enormous efforts taken for the redefinition of the philosophical teaching on inalienable rights in the egalitarian context of a democratic society (Brown, 1996, p. 1238). This could be the basis for the birth of the practical notion of freedom. According to this, the individual does not exercise their personal freedom in spheres independent of the central power—in the economy, civil society, or public debates—through the state.[3]

While the previously mentioned modern thinkers—from Locke to the Founding Fathers—tried to define the essence of the right to private sphere on the level of theory, the private sphere itself went through great changes. Here it is worth mentioning Jürgen Habermas' work *The Structural Transformation of the Public Sphere*. The author argues that the classical approach of modern natural law clearly distinguishes between the civil association of citizens and the sphere of public power. In this dualistic idea, the intimate sphere of families and that of the private economy appear structurally identical, both of them representing the sphere of private freedom. However, the end of the 19th century brought about considerable changes in this respect. On the one hand, a harsh dividing line appeared between private economy and family life. On the other hand, social movements made the "polarisation of private life" visible and shed light on the differences appearing in the way of life, quality of life, and "private sphere" of the members of society. Instead of the development of private autonomy, the movements of the end of the 19th century fought for equal rights of participation and communication. Therefore, in this new era, the essence of private freedom needs to be redefined considering that political actors and members of the public sphere stop being identical with the independent actors of the private economy. Furthermore, they can refer to the sphere of the private economy and bourgeois family life as the conflict-free zone of private freedom to a smaller degree (Habermas, 1990, pp. 22–24).

description of this transformation that one can understand better the normative consequences of individualization (p. 64).

[3] See the description of the evolution of this ideal of freedom from the aspect of philosophy and social science in (Habermas, 1978, pp. 63–64).

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The idea of the "right to privacy" took root first in the American legal tradition: its first explicit definition appeared as late as 1890. Justices Warren and Brandeis (1890) defined the "right to privacy" as a legitimate claim for "the right to be let alone," by quoting important parts of the Bill of Rights (p. 193). However, they did not consider the right to privacy a fundamental constitutional right either; and they stressed that it was a derivative right. Brown thought that for the more complex definition of the "right to privacy," it was, interestingly enough, the debates on humane and fair workplaces that took place in the 1970s and 1980s that were necessary—Brown refers to the works of Nickel, Ewing, and Werhane. In these debates, the "right to privacy" appeared as a legitimate claim for the central regulation and manipulation of all the activities of the individual. However, as opposed to the political-philosophical debates underlining the importance of public freedom, these debates suggested that in the program of the humanization of the institutions and society, the protection of the private individual, who is independent of public influence, has key importance. At any rate, the final outcome of the two "stories" that were outlined is interesting: if Brown's diagnosis is right, then the most complex definition of the "right to privacy" had appeared exactly before the workplaces became modern panopticons in the eighties. This "coincidence," at the same time, perhaps promises that the potential antidote for the attack against privacy can be found in the American legal culture.

A Possible Diagnosis of an Era

Shoshana Zuboff, whose work is an important point of reference for Brown, confutes the plausible view that the need for control based on observation arose alongside computerized work organization or with the advent of the internet. In Zuboff's work, the problem of observation and control fits in a wide historical context, and the concept of "panopticon" assumes symbolic significance. As is widely known, the plan of a "panopticon" as a disciplinary institution was the idea of utilitarian philosopher Jeremy Bentham in the 18th century, and it was originally meant for prisons. The point of this structure is that a guard observes the movements of the inmates from a guard tower in the center of a circle- or star-shaped building in such a way that he is not visible to the convicts. In principle, the guard can observe everybody but he cannot control everyone at the same time. Since this observation is not mutual, the convicts are not aware of when they are observed, this is why they control their own behavior, so no direct violence is required for this coordination. In his book entitled *Discipline and Punish*, Michel Foucault (1991) described how the structure of the panopticon had become the example to be followed by modern surveillance systems, not only in prisons but also, in health care institutions, schools, and offices. Foucault also defined a more general thesis. In his view, the most

important tendency of modernization is that obedience is not coerced by those in power with threatening with torture or corporal punishment but rather, by manipulating people's behavior, by "controlling the spirit and the souls." In Zuboff's case, the symbol of the panopticon gains significance in a much more general perspective of the history of civilization. She points out that, from the different mythologies to pieces of modern fantasy literature, the person or magical creature is an important figure in a wide range of literary and artistic works. This figure obtains superhuman powers by getting an insight into everybody's lives, either due to their particular situation—such as the deity of the sky in ancient Mesopotamia or the inhabitants of the ancient Greek Mount Olympus—or some magic, for example, an object that makes one invisible, such as the ring in Tolkien's novel. In this broader context, the panopticon is the experiment of the modern human to realize a dream of several millennia, that is, to gain the power provided by "knowing everything about everyone."

It is from this perspective that Zuboff reconsiders the findings of her research into organizational sociology and the sociology of work. In the period between 1978 and 1988, she followed the transformation of several companies and offices that increased their productivity by relying on information technology. She drew her conclusions in the form of identifying three rules: (1) at the organizations, all work processes that could be automated were in fact automated; (2) all information that could be transformed into digital information was in fact transformed into digital information; and (3) all technology that was suitable for observing and controlling the employees was in fact used for this purpose—irrespective of its original function. In all cases, the outcome was the transformation of the company or office into a perfectly functioning "smart machine" (Zuboff, 1988, p. 390). The employees became well-functioning parts of this machinery because they felt that their activities were probably being observed—this was proven by Zuboff through her interviews. The managers were generally responsible for the assessment of the enormous amount of information that was generated during the work process. However, they were aware that in case of an upcoming issue, even the way that a certain work process was performed, be it even the most insignificant one, could be subsequently controlled by relying on information technology. This is why Zuboff thought that what she saw during the operation of these entities was the panopticon described by Foucault, that is, a system in which the employees' activities and even their thinking were predictable. Thus, for the creation of the perfect panopticon, it was not the spatial position of the observer and the observed that had to be designed with engineering accuracy but design a system in which those who are observed

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continuously generate detailed information about themselves retrievable at any time. In a broader context, this also means that to date, it is the creators and operators of the systems based on information technology that have come closest to realizing the mythological dream of humankind. They have gained total power by having become able to follow each moment of the others by becoming invisible (Zuboff, 2013).

What significance does the NSA (US National Security Agency) spying scandal bear from this perspective? According to a plausible view, the explosive spreading of internet access and the use of desktop computers, laptops, smartphones and iPods were favorable for individualization in the positive sense of the word. We may think that interaction between individuals has become less determined by the traditional power lines and bureaucratic structures. Parallel to this, in order for an individual to obtain information or get access to goods, he does not have to rely on intermediaries or institutions anymore, as obtaining information and purchasing goods have become more direct and have adapted to the needs of the individual. From this angle, it is the merit of the large US American internet companies—first of all, Google, Yahoo, Facebook, Microsoft, Skype, Apple, and YouTube—that they recognized the value of the internet-using individual. Of course, these companies pursued their well-calculated business interests, while the platforms that they had built were still used to establish horizontal relations between the individuals. It is the consequence of this that it is considered that the NSA spying scandal means the unveiling of the historical crimes of the US administration—Zuboff identifies this with the standpoint taken by the author of *The Facebook Effect*, the "technology guru," David Kirkpatrick. By launching its observation program called Prism in the interests of its particular political goals, not only did the US administration compromise giant corporations, which were forced to collaborate but also destroyed the old desire of power-free democratic communication once and for all.

In Zuboff's view, this narrative is already contradicted by the experience of internet users. Well before the observation incident, it could be experienced that the different products and brands were present on Facebook as "persons" and so, they were integrated into the users' communities as constantly communicating "friends." Also, the users may have suspected for a long time that these companies had been given the opportunity to send them tailor-made advertisements based on users' profiles and search patterns. Zuboff refers to surveys that suggest that the confidence vested in the large internet companies was already shattered or collapsed long before 2013, as the consumers increasingly felt that only the devices by using which they

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generated the contents belonged to them, and others disposed over the contents. According to an opinion poll conducted by the Harris Poll in 2012, only a mere 8 percent of US Americans trusted social media exactly because of this (The Harris Poll, 2012). The distrust of the Germans was even stronger in this period but in Brazil or Indonesia, where social media had spectacular success before, enthusiasm halted by 2012.

Looking back, it seems like the giant internet corporations realized, as early as when they started their operations, that they possessed several billion items of such data, especially about the young generation. When used the data, the evolution of consumers' or electors' preferences could almost perfectly be calculated in advance, broken down to individuals. Following this recognition, these companies could have decided to base most of their revenues traditionally on services provided to the individual users, while they protect them and their connections organized on the network, as well as their manipulation-free communication from the influence of large companies. However, from the very outset, the larger part of their income has come from selling these data to the creators of the targeted advertisements and those who possessed the best technical apparatus to calculate behavior—in other words, for those who were the most financially interested in buying these data.
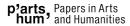
Zuboff argues that these companies became the creators of "a new type of economic and social logics." In this economic system, the benefits that come from the gathering of private data do not only supplement the profits of a capitalist entrepreneur. The new capitalist entrepreneur looks at the user not as a contractual partner, not even as a simple consumer but as a "source of raw material." It is a novelty that the fundamental driver of this new type of economy is the mass of people who shed the information suitable for predicting their behavior in manipulated circumstances, without the chance to obtain meaningful information and without any legal regulation, free of charge and unwittingly. These logics presumably permeate the world of politics as well. This assumption of Zuboff may be interpreted in such a way that gaining the support of masses of people depends less and less on the traditional political merits like rhetoric skills, the ability to govern, or having a comprehensive vision. It much rather depends on exploring the so-far secret emotions of masses of individuals and on maintaining such segmented public. This way, the precalculated messages can be directly forwarded to electors' groups separated from each other. For this reason, Zuboff, all in all, thinks that "panoptical power" did not remain within the frame of modern work organization but became a comprehensive society-shaping power by the 2010s.

However, I assume that Zuboff does not give a coherent answer to the question concerning the steps that may be taken to protect privacy in the societies organized based on this new logic. Zuboff thinks that, at the time of writing her article, American teenagers are turning from Facebook to other types of social media that give them more personal freedom. In her opinion, the consequence is that if users have the opportunity to find connections and information on the online platforms whose developers and owners are involved in data trading, these users will turn away from these social media and online search engines as known today. She draws attention to that the tech companies that handle huge data traffic still treat the masses of private individuals who are worried about what will happen to their data as a great risk. Therefore, there is still hope that the current internet users will transform into a potential democratic community that expects transparency from the next generation of IT companies, having drawn their conclusions from their bitter experience.

However, in Zuboff's study, a much more complex picture of the contemporary "panopticon" unfolds. On the one hand, it is clear that "information panopticons" are not only formed in the world of online communication. The areas of large cities are covered by camera surveillance systems, while facial and gesture recognition software programs are developing explosively. This suggests that the "owners of panoptic power" may even be familiar with such involuntary actions and utterances of ours that are generated offline, and of which we would never think that they may serve as the basis for forecasting behavior. The conscious avoidance of social media or well-known search engines may bring transitional success, but an "exodus" cannot be regarded as a universal strategy for stopping "panoptical power."

At the core of Zuboff's interpretation stands that it is only one side of the story of the "information panopticon" that every human act and gesture believed to be spontaneous—even emotions that are considered private—become recordable in the form of accurate data. Therefore, the groups of society which have the technical apparatus to process data and the forecast behavior thus come to possess a new type of power. The other side of the story is the peculiar "evolution" of this power. This logic of power can only be maintained if the owners of this power use these technical devices to create the illusion of reconquering spontaneity and privacy amidst the rapidly changing circumstances. If this assumption is valid, then the mere requirement of spontaneous organization does not bring the panoptical power that permeates our lives to a halt.

In general, it also poses problems in Zuboff's works and utterances. What we can see is the image of a social actor who recognizes the legitimate boundaries of their

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privacy absolutely naturally, who recognizes that this privacy constitutes a key element of their personal integrity, and who is able to identify the threats in the new situation as well. The idea, still emphatic in the thinking of Brown, for example, is pushed into the background—that one only stands a chance for the protection of their privacy if one takes serious intellectual efforts to re-interpret themselves as "private beings" in the historical-cultural circumstances of their age. If, for example, one always makes an attempt at re-interpreting the normative presumptions of "the right to privacy" in the legal discourse of the age in question.

Critical Remarks on the Information-focused Approach

Many authors do not think that we have "a priori" knowledge of where the boundaries of our privacy lie. Depending on culturally defined patterns and the context of discourses, we all define the private and public boundaries of our privacy in different ways. The most typical examples are: privacy is sometimes linked to the need to control one's own body and self-determination that should become independent even from the influence of the closest relatives. At other times, it means the very family, the possibility of becoming free in intimate, loving relationships, which deserve to be protected from the alienating tendencies of the workplace, the market, or the bureaucratic state apparatus.[4] The private sphere understood as the "home," describes these intimate relationships (Sklansky, 2014, p. 1109). Sometimes, however, the metaphors "fort" or "castle" are associated with it, which are, in this case, grasped as a sphere where the individual may exercise tyrannical power over their immediate environment, freed from the judgment of others (Margalit, 2001, pp. 259–260). Privacy is considered in terms of the intrusion of others. If a participant at a discourse considers the unauthorized intrusion of another private individual the greatest threat to privacy, they will refer to it using visual metaphors, for example, "peeping." If, however, private freedom means legitimate opposition to a political conspiracy, one tends to describe unauthorized invasion by using the analogy of "interception" (Margalit, 2001, p. 257). Adam D. Moore thinks that unauthorized invasion of one's privacy can best be identified from the perspective of the classical bourgeois committed to the sanctity of ownership. However, he also calls the reader's attention to that one cannot appropriately interpret all the phenomena of misusing confidential information from this perspective, which means that private freedom also has to be defined from an information theory point
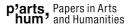
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[4] Interestingly, Axel Honneth (2011) describes this as a form of social freedom, sharply distinguishing it from private freedom which is described as a retreat to "defense," becoming free from communicative relations (p. 149).

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of view (Moore, 1998, pp. 371–374).[5] Margalit (2001) thinks that the protection of privacy appears in the US constitutional tradition with two different meanings: it sometimes appears as the constituent of the human nature of an individual, while at other times, it deserves protection as the guarantee for a "flourishing life" (p. 256). Sometimes it is referred to as a *human right*, where the individual is protected from encroachments by the state; at other times, as a *civil right*, it is the right of an active citizen to formulate an independent opinion.

We can best understand our individual right to privacy if we consider the plural meaning correlations of this privacy. Professor of Law at Stanford University David Alan Sklansky, however, concluded, after having analyzed the legal, public, and academic disputes of recent years that, by now, the "information focused interpretation" of privacy had squeezed out the other traditional interpretations. Sklansky acknowledges that in the US Constitutional Court decisions, the protection of privacy has traditionally meant the disposal over one's own body and the protection of intimate autonomy. From the 1970s, however, a new tendency appeared: the decisions on the disposal over one's body or same-sex marriages were increasingly dominated by the traditional concepts of freedom and equality; thus, the ideals of intimate autonomy and privacy were gradually separated from each other. As a result, the right to privacy to obtain a new and more accurate definition in Constitutional Court disputes has increased. This is why Alan Westin's proposal has found fertile ground, according to which the expression "protection of privacy" should exclusively be used for those cases when the individual rightfully restricts the spread of information about them (Sklansky, 2014, p. 1093). It was also typical earlier that when the court referred to the "protection of privacy," this usually meant, very hazily, family matters and relationships with friends. This brought about a very special counter-reaction in the leftist public law discourses: many supporters of the critical theory thought that the division of private and public spheres was a fake dichotomy, which concealed that an individual may gain their freedom in social activism. Leftist theoreticians also discovered the "citoyen" merits and increasingly tended to think that it was mostly those who mentioned the intactness of privacy who wished to cover up for the typical cases of oppression in the family. The information-focused approach to privacy—which means that privacy has no fundamental value, only obtains its value from the individual interest calculations—was acceptable from this viewpoint as well (Sklansky, 2014, p. 1093).

It was a major scientific discovery of the second half of the twentieth century that, once one interprets the world as a large, impulsive data flow, one may obtain new methodological

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[5] It is a curious example of the information theory approach that gives the misuse of health care data as an example (Introna-Pouloudi, 1999, pp. 28–30).

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instruments for the quantitative analysis of the individual details of reality. After this discovery, information theory had become such an inevitable point of reference for social sciences as Newton's classical mechanics or Darwinism used to be in the past. The economy also adjusted to the possibilities provided by information technology, and the attention of legal scholars increasingly shifted towards the rules allowing the flow of information. This is how the approach according to which private freedom means the control of personal information also took root in academic discourse (Sklansky, 2014, p. 1094).

Sklansky assumes that our views on the protection of privacy are still determined by our experience gained in the Cold War. He thinks that the socialization of Eastern Bloc intellectuals was fundamentally determined by the experience that every moment of their lives may be observed and in order to avoid unpleasant or even fatal consequences, they had to adjust their actions to the requirements of the single-party state. The vivid descriptions of this experience were substantial sources of understanding the organization of society based on intimidation for the researchers who lived on the other side of the Iron Curtain. In this context, Orwell's novel *Nineteen Eighty-Four* was read not only as a piece of fiction of critical importance but also as a guide to understanding the anomalies of modernity. It was at this time that Foucault's idea, also accepted by Zuboff, became influential. According to it, modern power was organized not by applying direct force but by coercing control and conformity (Sklansky, 2014, pp. 1097–1098).

In this period, the question frequently discussed was how the atmosphere of fear could serve as the basis for building up a power structure. It was less important to answer the obvious question of whether continuous observation, the trickling down of agents into everyday life, or the potential sanctions—ranging from losing one's job to imprisonment and execution—create the atmosphere of fear and coerce cooperation. However, this question remained unanswered even after the Iron Curtain had come down. In this new situation, the apparatus of observation was much more refined—it did not require the presence of agents—and the gathering of data was typically not subjected to the needs of a central power that also applied the means of humiliation. In the new situation, the assumption lived on unreflected, namely, that the mere collection of information or the regular control of habits in itself hinders the development of the individual and independent thinking (Fried, 1968, p. 490), as well as democratic activity (Solove, 2002, p. 1102). Sklansky (2014) calls this idea the "stultification thesis" (p. 1094).
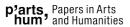
Thus, it is an critical question in what circumstances observation coerces conformity. However, in Sklansky's opinion, the number of empirical studies in which the validity of this assumption is tested is negligible. On the other hand, the empirical research efforts

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on this subject frequently weaken the thesis; their findings often contradict each other. For instance, some theoreticians think that audio recording weakens the sincerity of the suspects during interrogation. However, according to the empirical study conducted by Sklansky (2002), the suspects tend to forget about the presence of the audio recording devices (pp. 1263–1264). Researchers at Harvard University found that using a tracking device made some of the inmates expressly nervous and disturbed; however, most of those who wore these ankle monitors were not bothered by this anymore than by wearing a wristwatch (Sklansky, 2014, p. 1095). Data show that the NSA spying scandal in 2013, which unveiled the collaboration between internet companies and the secret services, did not fundamentally change the patterns of using social media. Thus, it may easily be the case that the users become immune to certain forms of monitoring and share private information about themselves without being forced (Sklansky, 2014, p. 1099). Having these examples in mind, Sklansky thinks that the hypothesis on the harmful effects of observation is relevant even these days. However, it is a problem that the testing of this assumption is not the subject of any significant research programs but is present in academic and public discourse with axiomatic validity, without the shadow of a doubt.

Sklansky is primarily interested in the impact of these tendencies as a lawyer. He focuses on particular cases of invasion of privacy: when the representatives of an institution, such as a prison or a school, apply the method of strip-searches. These cases, which concern the Fourth Amendment to the United States Constitution, bring up several questions in the judicial procedure. During such a procedure, it should be thoroughly examined whether the person performing the strip search has violated the self-determination of the individual in question or not, and if so, whether the search was done legitimately or not. It should be found out whether the person conducting the strip search was entitled to do so as they represented the government or an institution with special procedures in the case under review. If there was a violation, was it the institution that misunderstood its authorization, or was it the private individual conducting the strip search who misused their momentary power, following their own (racist) prejudices? We could see that the currently dominant discourses fundamentally interpret privacy as the control over personal information and in the context of the relationship between the state and the citizen due to historical reasons. In this respect, Sklansky critically remarks, we do not have the right concepts for sensitively analyzing such cases where the private individuals who have been given power hurt someone as a human by invading their intimacy. Sklansky (2014) thinks that this is why the expression "assault on privacy" should be applied for the particular cases of violating human dignity (p. 1106).

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Of course, a society in which all our data are "a part of an enormous information flow," and in which we can have no control whatsoever over the spread of information about us, is not even acceptable for Sklansky (2014), who criticizes the information theory approach to privacy (p. 1102). However, at first sight, the human-dignity-focused idea of privacy offered by him seems to be rather narrow for distinguishing between the legitimate and illegitimate forms of information gathering and storage. However, what is certain is that if one identifies the paradigmatic cases of assaults on privacy with the painful experience of invading intimacy, the focus of criticism will change as compared to what we have seen in the works of Brown and Zuboff. On the one hand, we may say that the procedures of monitoring online communication should be subjected to broad empirical examinations to find out in which specific cases they lead to shattering of confidentiality between people. However, neither the range of observation nor the level of sophistication of the technical apparatus in itself reveals the extent to which power invades citizens' privacy. On the other hand, those cases should be subjected to analysis where the state, or a company or an institution, uses information gathering for generating a continuous feeling of shame in the observed subjects during the process of observation. However, we can definitely not identify the cases of efficiently exercising power and misusing power if we identify the presence of the apparatus of information gathering as the gaining ground of a pervasive mysterious power from the very start.

Sklansky thinks that one can best identify the many kinds of threats to privacy from the perspective of a person who has suffered humiliations and shame in their lives. He is right in thinking that the cases of invading intimacy may explain that private autonomy obtains its fundamental value as an inalienable part of personal integrity. If, however, one contrasts Sklansky's line of thought with the earlier analyzed work and organizational sociology theory, then the limits of his theory can also be identified. Through analyzing modern management, Brown and Zuboff have pointed out such forms of exercising power that does not take place by traditional means such as communicative coordination, convincing, or open violence. Their study shows that by relying on modern technology, an increasingly complex picture of the users or citizens can be built: private decisions can be manipulated in such a way that the individuals are less and less aware of such manipulation. Thus, the privacy of an individual may also be violated in such a way that it is not directly linked to the painful experience of the violation of personal integrity. Thus, it seems like the legal or social philosophy perspective, which is sensitive to the viewpoint of human dignity, is only one perspective from which one can assess the threats to one's privacy.

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Based on work sociology research concerning the private sphere and literature on human dignity, the article outlined the two different normative concepts of the right to the private sphere that contribute to the relevant interpretation of the surveillance case in 2013. If outlined, the two approaches appear not to have any common ground that could be the basis of a comprehensive theory of the right to the private sphere. Contrasting the two different approaches, however, can raise relevant questions. Regarding the approach that argues for human dignity, the article raises the question of whether impersonal cases of surveillance that do not imply repression or cause fear can also be considered unlawful or pathological. However, the article also draws attention to the fact that the transformation of the logic of power and the enormous structural changes endangering the privacy of masses cannot be interpreted from the perspective of legal or social philosophy but rather from the one offered by organizational sociology and sociology of work.

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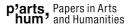
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