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Privacy for sale - Business as usual in the 21st century: An economic and normative critique

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Privacy for Sale— Business as Usual in the 21st Century

An Economic and Normative Critique

Wilhelm Peekhaus

Abstract

In this paper the author sets out to analyze and critique the commodification of privacy model advanced by Kenneth Laudon. Situating this market-based model of privacy within the context of the resurgence of neo-classical economics of the last two decades, the author asserts that contemporary economic models, and in particular the intellectual property regime, have difficulty in adequately conceptualizing and treating information. When considering the implications extended by the commodification of privacy model for social and power relationships in society, the author argues that the model gives rise to increased surveillance and greater opportunities for social control and decentering of the individual vis-à-vis commercial institutions. Expanding the panoptic metaphor permits an analysis of additional risks posed to individuals and society as a result of the increased surveillance made possible by the commodification of privacy model. Ultimately, the author concludes that the commodification of privacy model emphasizes one particular instrumental value of privacy that is misaligned with the normatively more important goals and objectives of privacy protection.

Introduction

Although the notion of privacy is not a modern concept,¹ it has only been within the last three decades that privacy legislation has actually been drafted in much of the developed world. Similarly, the interest in privacy as an academic discipline is relatively new, tracing its roots to *Privacy and Freedom*, the

seminal book by Alan Westin published in 1967. The relative youth of this area of study is also partly reflected by the panoply of heterogeneous definitions contained within the academic literature; most writers lament the difficulty associated with developing an all-encompassing explication of the concept of privacy (Agre & Rotenberg, 1997; Bennett & Grant, 1999). In fact, in 1995, Alan Westin stated at a conference that “no definition of privacy is possible, because privacy issues are fundamentally matters of values, interests, and power” (as cited in Gellman, 1997, p. 194). Accordingly, one encounters clarifications of physical and bodily privacy, local privacy, privacy of the home, decisional privacy, and informational privacy. This may, in part, explain the disconnect between opinion polls that increasingly cite abstract concern about privacy and the lack of popular support and movements mobilized in favor of privacy rights (Agre, 1997; Davies, 1997).

For the most part, the national privacy legislation of the 1970s and 1980s was generally designed to address concerns about the privacy relationship between the individual and the state. Yet in the interim, transformations in the economic, political, and technological landscape have occasioned the locus of privacy protection to shift toward a sharpened emphasis on concern about commercial exploitation of privacy (Agre & Rotenberg, 1997; Bennett & Grant, 1999; Laudon, 1996). In turn, this has, in part, resulted in a perceived failure of contemporary laws and conceptual frameworks to address such shifts. One interesting response to this situation has been the development of a market model of privacy.² This model, which arguably has been most comprehensively articulated by Kenneth Laudon, proposes that privacy be treated as a property right. In essence, market-based mechanisms based on individual ownership of personal information, with corresponding entitlements to control the disposition of such information, are premised as the means by which privacy can be safeguarded in the 21st century. As might be expected from a model steeped in economic motivations, it adopts Pigou’s notion of externalities and asserts that the true social cost of invading privacy is much higher than the actual cost of invading that privacy. The reason for this is that both the person whose privacy is invaded and society as a whole must bear part of the social cost of the invasion through direct, indirect, tangible, and intangible costs. Direct costs include opening unsolicited mail and responding to unsolicited communication. Indirect costs stem from the need to maintain inordinately large mail and communication facilities to process the unsolicited mail. Tangible costs result in a loss of productive and leisure time, while intangible costs arise from a loss of control over information about oneself, feelings of helplessness, and feelings of mistrust toward large commercial institutions (Laudon, 1996). The consequence is that personal privacy becomes expensive and limited, while the use of personal information is wasteful and results in allocative inefficiency. Therefore, under the market-based privacy model not only would individuals

have to give active consent for their information to be used, but they would also receive financial compensation for such use. Indeed, under Laudon's model (1996) a National Information Market would be created to facilitate the purchase and sale of information about individuals at a market-clearing price, where supply equals demand. Thus, the core of this proposed paradigm asserts that individuals should have the right to profit when divulging personal information to organizations that will derive pecuniary benefits from a commercial application of such data.

The solution to privacy protection offered by the model allies closely with the resurgence of neo-classicism over the last two decades by advocating the extension of common law property rights to personal information. Yet as personal information is steadily commodified, existing power asymmetries between the individual and the state and business are exacerbated in favor of the latter two actors (Gandy, 1993). The danger is that citizens and consumers will increasingly surrender their right to privacy, both knowingly and unknowingly. As Davies (1997, p. 160) has asserted, "[P]rivacy's journey from the political realm to the consumer realm invokes a new set of relationships and values. Placing privacy in the 'free market' environment along with such choices as color, durability, and size creates an environment in which privacy becomes a costly 'add-on.'" The question then becomes whether an economic model of privacy might have repercussions that threaten to impinge upon society in areas well beyond the economic realm?

Keeping in mind Westin's statement that privacy pertains to matters of values, interests, and power, this paper will analyze and critique the commodification of privacy model from an economic and normative perspective that considers social issues as well as power asymmetries between individuals and commercial institutions. Despite the difficulties mentioned previously, attention will first focus on offering a conceptualization of privacy suitable to both the commodification of privacy model and the critique of it offered by this paper. Given the basic economic underpinnings of the commodification of privacy model, the paper will then engage in a brief analysis of the economics of information to determine the applicability of an economic-based model to personal information. This section will also consider whether an intellectual property regime, which functions as a key modern mechanism for commodifying information, can be transposed in service of the commodification of privacy model. The third section of the paper will interrogate the commodification of privacy model's potential to increase surveillance and thereby exacerbate existing power asymmetries between individuals and commercial organizations. This contemplation of the panoptic qualities of the commodification of privacy model will provide the segue necessary to expand the panoptic metaphor in the final section, in order to investigate four salient risks associated with the loss of privacy that obtains through increased surveillance.

Defining Privacy

Before interrogating the commodification of privacy model, consideration must first turn toward a suitable definition of privacy. Despite the challenges to developing a workable definition of privacy that have been articulated by a number of authors, Judith Wagner DeCew (1997) proposes that privacy be conceptualized as an array of rights. Such a theoretical construct aids in framing the privacy issue as one of human rights, which potentially renders the commodification of privacy model hollow and impracticable.

Wagner DeCew (1997), building on the work of Schoeman (1992) that considers contexts in which privacy issues emerge, suggests conceiving privacy as a cluster of overlapping claims based on types of information or activity that should attract privacy protection. The three aspects of privacy she identifies are informational, accessibility, and expressive. Informational privacy refers to the expectation that under normal conditions the bulk of information about an individual should be shielded from the public realm. This aspect of privacy protection encompasses individual autonomy in its demand that individuals retain the right to determine who will be granted access to what aspects of their personal information. This component of Wagner DeCew's definition accords with Westin's notion of privacy as a "claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others" (1967, p. 7). Accessibility privacy overlaps, in part, with informational privacy but goes beyond information to focus on observations and physical proximity in an attempt to limit undesired access to an individual that may invoke feelings of fear, inhibition, and vulnerability. Expressive privacy offers protection by allowing individuals to express their self-identity through speech or action. This type of privacy fosters the development of self-identity and values, thus helping to limit external control while augmenting internal control over self-expression (Wagner DeCew, 1997). The benefit, at both the individual and societal level, of this latter aspect of privacy has been well articulated by Ruth Gavison (1984, pp. 363–364):

Privacy thus prevents interference, pressures to conform, ridicule, punishment, unfavourable decisions, and other forms of hostile reaction. To the extent that privacy does this, it functions to promote liberty of action, removing the unpleasant consequences of certain actions and thus increasing the liberty to perform them.

The strength of Wagner DeCew's conceptualization of privacy is that it frames the issue in a manner that contemplates the essence of the commodification of privacy model, as well as the concomitant discussion of its broader implications for human dignity and individuality that provide part of the basis for this paper's critique of the model.

Information Commodification and Its Conceptual Justifications

Given the latent economic imperatives of the commodification of privacy model, any analysis and critique is obliged to first assess the conceptual justifications marshalled in support of applying neo-classical economics to information, including personal information. Capitalist imperatives include seeking new markets, maximizing profits, defending property rights, and minimizing risks by eliminating competition. It thus logically follows that an inherent characteristic of the capitalist system is the drive to commodify things in order to sell them in the marketplace for their exchange value. Information has not escaped such pressure to be captured within the commodity form. In fact, the commodification process has intensified in advanced capitalist society due, in part, to the opportunities for selling information that advanced technologies provide by transcending the limits that space and time impose on the packaging and repackaging of information in a marketable form (Mosco, 1988; Sussman, 1988). Indeed, as has been discussed by a number of authors, there already exists a vigorous market for personal information that is dominated by large institutions that assert ownership interests in the data they gather about individuals (Agre & Rotenberg, 1997; Bennett & Grant, 1999; Laudon, 1996; Lyon, 1994).

In an effort to lend greater control to individuals over the flow of their personal information, the model espoused by Laudon (1996) would grant ownership rights in personal information to the individuals to whom the information pertains. From this perspective, the model offers an ostensible means to help redress power inequities between individuals and institutions as well as proffering a more accurate conceptualization of the capitalist information market. Moreover, in line with advanced capitalist conditions it provides an economic solution to a perceived policy failure that has lasted for close to two decades (Laudon, 1996). However, while the model may be laudable in its attempt to reduce invasions of informational privacy by restoring control over personal information to individuals, it may actually imperil rather than foster privacy if opponents of protection convincingly argue that it represents a direct cost to business that will be passed on to consumers. After all, the cost factor can function as an important rhetorical instrument in the hands of privacy antagonists since it sparks concern that costs of goods and services will rise due to a few “fundamentalists” (Davies, 1997). Perhaps more importantly, on a conceptual level the commodification of privacy model suffers from its underlying acceptance and expansion of the validity of the commodification of information.

Yet the intangible nature of information poses difficulties for capitalist categories of economic theory, in particular with regard to the sale of informa-

tion. Information as an artifact is non-rivalrous and non-exclusive, such that consumption by one person does not detract from that of someone else and use of information, under natural conditions, is available to everyone. Therefore, unlike physical property, information cannot naturally derive its inherent value from scarcity. Thus, the nature of information precludes it from conforming to the characteristics of traditional, tangible commodities such that, in the context of a market economy, an artificial mechanism is required to create and preserve scarcity. The instrument developed to facilitate scarcity is the intellectual property regime, which consists of copyright, patent, trademark, industrial design, and trade secret protection. Indeed, contemporary intellectual property regimes, particularly copyright and patents, provide a substantial legal basis for the commodification of information, which has occasioned information to be subsumed within the neo-classical economic model to function as a commodity exploited for its commercial value. The same underlying intent propels the commodification of privacy model.

However, the Lockean labor-desert rationale for conferring intellectual property rights on creators cannot convincingly be appropriated by the commodification of privacy model to justify an individual's ownership claim over personal information that is gathered by another individual or entity. In fact, under Lockean theory all property rights would accrue to the latter actors as a result of the labor exerted to collect the information. Therefore, a key theoretical justification for bestowing property interests in information upon individuals would not be applicable to the commodification of privacy model. Moreover, the commodification of privacy model would accord property rights to facts, which have traditionally been considered beyond the intellectual property protection afforded by copyright. By recognizing property rights in facts, the commodification of privacy model would affirm rights of restriction that could have chilling effects on subsequent development and knowledge (Litman, 2000). Indeed, the model would mean "social knowledge and resources are appropriated and transformed into power and capital" (Robins & Webster, 1988, p. 70).

Moreover, the commodification of privacy model fails to consider the widely divergent power positions between the corporations using such data and individual consumers. Indeed, in the context of the growing commodification of personal information, Jessica Litman (2000, p. 1297) has discussed the

unwarranted assumption that initial legal ownership of facts would enable individuals to restrain their downstream use by negotiating conditions of use before disclosing them. That assumption seems to be inspired by a fairy-tale picture of easy bargaining in cyberspace through the use of intelligent agents.

Laudon (1996) himself is somewhat contradictory about secondary uses of information, since at one point he asserts that purchasers of information would

be free to exploit it for purposes other than those for which it was originally collected, while elsewhere he states that individuals would have to authorize this secondary use at some point. It remains unclear when this is to be and whether additional remuneration would be owed by the data user (commercial organizations). Part of the ambiguity here may stem from the ability of data mining procedures to reveal secondary information about individuals that normally would be quite difficult for data users to anticipate and to which data subjects (individuals) could consent (Tavani, 1999). Thus, data mining techniques may complicate Laudon's model in that secondary, and unanticipated, uses of personal information would potentially remain uncompensated. This distinction about secondary uses assumes additional significance in the context of increasing transnational data flows in the contemporary global environment. Yet the model does not consider cases in which data would accrue to an organization situated in a jurisdiction in which the model has not been adopted. Indeed, as data flows become increasingly unbounded by state borders, a significant question arises as to what are the prospects for this model in a globalized economy. This is particularly vexing since the power inequities between individuals and corporations tend to be magnified at the transnational level.³

Furthermore, as Gandy (1993, 1996) has argued credibly, consumers must often surrender information in order to execute a transaction, which, regardless of whether the information is given freely, reflects a consumer response to a form of power. The commodification of privacy model fails to account for exactly those situations in which the individual is actually a contract-taker rather than a contract-maker and is compelled to surrender information in order to complete a transaction. It seems irrelevant whether an individual is compensated financially, if that person was cajoled into supplying information he would have otherwise preferred to keep private. It is precisely in this context that comments by Litman (2000, p. 1303) appear particularly astute:

The weaknesses of the property model are, first, that it encourages transactions in data that most of us would prefer to be discouraged and, second, that its reliance on alienability and easy waiver tend to vest control over personal data in the data miner rather than the data's subject.

Clearly, the implications of the model extend beyond economics to considerations of power and its asymmetrical distribution.

Increased Surveillance—Revisiting the Panopticon

Indeed, a significant flaw of the commodification of privacy model is its emphasis on economic rationality to the exclusion of social and technological

factors, as well as asymmetrical power relations. While one needs to be wary of arguments that proceed into the cul-de-sac of technological determinism, the exponential growth in networked computing of the last generation has had an impact on privacy. For example, computer matching and data mining offer poignant illustrations of what Jacques Ellul has referred to as the self-augmenting capacity of technology (as cited in Lyon, 1994). Nonetheless, this must be considered in tandem with broader social, political, and economic concerns. As Poster (1990) has convincingly argued, a question that encompasses a number of these facets queries where the human self is located if fragments of personal data circulate throughout computer systems beyond the personal control of any agent. It is in this context that Lyon (1994, p. 19) speaks of the "data-image," which he purports is often different from a person's "true self."

By neglecting the potential development of the "data-image" made possible by expanded information networks around the world, the privacy commodification paradigm also fails to consider the potential for increased surveillance by commercial institutions. Indeed, the rise of surveillance⁴ arguably can be linked to broader transformations in capitalist production from mass to customized manufacture. This latter type of production demands a more individually tailored type of marketing, which in turn depends upon customer surveillance (Culnan & Bies, 1999; Samarajiva, 1997). Although it might be suggested that consumers could receive information about products and services seemingly appropriate to their circumstances, the commodification model of privacy, which would undoubtedly lead to increased amounts of personal data being made available to commercial institutions, might just as easily lead to increased surveillance of citizens in their role as consumers. This growing informational infrastructure might reflect the "social factory" that Negri has proposed emerged as capital increasingly adopted highly organized and technologically driven forms. The result has been a condition in which "the factory spreads throughout the whole of society ... production is social and all activities are productive" (as cited in Dyer-Witheford, 1999, pp. 171–172). A *prima facie* case might therefore be advanced that such surveillance power is a post-modern manifestation of asymmetrical class relations between capital and labor, in which individual information is appropriated by capital to provide value to capitalist production. Alternatively, with reference to Foucault one could argue that such surveillance power is ubiquitous and increasingly operates at all levels of society through which individuals are constituted as objects of knowledge. Whether one adopts a Marxist or Foucauldian analysis, this increased surveillance and collection of data, including transactional data, facilitates what Mosco (1988, p. 13) has termed "social management," or the influence on consumer behavior to conform due to surveillance. The market for network-based products and services is particularly amenable to exerting this

type of social control given the relative ease with which consumer data gathering and targeting can be executed (Mowshowitz, 1996). This ability to induce people to conform to behavioral norms through a system of sanctions and rewards has been termed “bureaucratic surveillance” by Rule et al. (1980). Rewards might include qualifying for a car loan or insurance policy, while sanctions may come in the form of being denied credit. With reference to Foucault, one might propose that a further danger of the commodification of privacy model is that people will come to participate in their own self-constitution as subjects within the normalizing gaze of the panopticon (Poster, 1990). Indeed, Foucault (1977) attributes a normalizing principle to the discipline of the panoptic that has also been picked up by Zuboff. She argues in her ethnographic study that information systems “can transmit the presence of the omniscient observer and so induce compliance without the messy conflict-prone exertions of reciprocal relations” (Zuboff, 1988, p. 323).

However, the technology of power discussed by Poster (1990), which is directly applicable to the commodification of privacy paradigm, goes beyond the disciplining of its subjects to complete forms, divulge social insurance numbers, or utilize credit cards; it leads to the development of databases that decenter the individual by constituting an additional self, which is constructed artificially from matched data that can be captured and manipulated without the “real” self ever being made aware of such activity. More importantly, these “digital selves” (similar to Lyon’s notion of the “data-image”) could potentially assume increasingly important roles in determining the opportunities afforded to “real selves.” As consumers become known to companies based upon the “digital self,” and because this method of selling works, the “digital self” substitutes for the “real self.” Therefore, individuals who surrender personal information as part of a transaction come to be viewed as credit seekers, on-line customers, depositors, etc.; these types of classification schemes can be quite potent (Bennett & Raab, 2003; Lyon, 1994):

My electronic image in the machine may be more real than I am. It is rounded; it is complete; it is retrievable; it is predictable in statistical terms.... I am in a mess; and I don’t know what to do. The machine knows better — in statistical terms. Thus is my reality less real than my image in the store. That fact diminishes me. (Beer, as cited in Lyon, 1994, p. 194)

This, in turn, raises questions about social justice and fairness, since ultimately such personal information is categorized and classified by the gathering institutions. In fact, such classification mirrors and reinforces social differences and inequalities of life-chances so that the categories into which data subjects are sorted also come to signify their broader social position and could attach meaning to their existence as consumers, workers, or citizens (Poster, 1990). The inherent danger then is that the commodification of personal information

might constrain and encourage people to conform to the existing capitalist order.

The question that then arises is not whether people will surrender their privacy, but whether they will keep it and reside in a society in which it is no longer of any human value (Mosco, 1988). Thus, the commodification of privacy model threatens to reduce and relegate individuals to roles based upon the functional sectors that identify the data controlling commercial institutions, which are ascribed and derivative identities that fail to reflect accurately the complexity and fullness of the individual.⁵ Moreover, the creation of the “digital self” threatens to undermine the sovereign, autonomous individual, which although perhaps a contingent historical construction, is nonetheless at the center of capitalist theory and practice. Ironically then, by subverting such individualism, capital, through the commodification of privacy model, could sabotage its own foundations.⁶

Alternatively, as more and more details about individuals become known, the more unique and individual one becomes, which makes it increasingly difficult to construct what Arendt termed a “community of one’s peers.” The commodification of privacy model could potentially precipitate increased levels of social atomization and fragmentation, thus exacerbating the challenges to developing social capital, without which economic prosperity is endangered, as Putnam demonstrated in his Italian study. In fact, Putnam’s (1993) analysis determined social capital to be the only reliable predictor of economic success. Thus, a possible erosion of social capital engendered by the commodification of privacy model could ultimately undermine the capitalist system it was designed to serve.

Aside from the social control and decentering of the individual made possible by the opportunities for increased surveillance inherent in the commodification of privacy model, the resulting panopticon portends a number of additional risks.

Extending the Panoptic Metaphor

As Bentham, and later Foucault, argued, the panopticon works even if the guardhouse remains unattended. The property of being “seeable” is as compelling as actually being seen in terms of producing effective social control. It was this element of visibility that Foucault argued made people become agents of their own subjugation (1977). It might also serve to reduce the “threshold of describable individuality” (Foucault, 1977, p. 191). Jeffrey Reiman (2004) elaborates further on the panopticon metaphor by emphasizing that this visibility occurs from a single point. The privacy individuals once enjoyed, due to the structural constraints of space and time that dispersed publicly observable

activities, no longer obtains in a networked world where data matching becomes an accepted norm through the commodification of privacy model. Very much in accord with Wagner DeCew's conceptualization of privacy, Reiman (2004) has pointed out some important risks associated with this loss of privacy due to increasing surveillance.

First, there is a risk of an extrinsic loss of freedom such that a reduction in privacy can result in an increased level of social control and pressure to conform to external norms imposed by others.⁷ Second, an intrinsic loss of freedom, which directly curtails an individual's freedom, can result if certain information is deprived of privacy protection, such that an individual automatically forfeits corresponding vital choices. In this case one is not dispossessed of the choices for fear of sanctions (i.e., extrinsic loss) but rather because the choices were only viable when privacy was enjoyed. Again, the data matching and data mining made easier by the commodification of privacy model, and that lead to the development of the "digital self," raise the scepter of aggregating information that leads to a *de facto* privacy invasion, thus circumscribing an individual's intrinsic freedom of action. Third, privacy promotes a sense of self-ownership through the ability to remove oneself from the scrutiny of others. The commodification of privacy model, through quasi-forced divulgence of personal information in order to complete a transaction, as discussed above, threatens to restrict substantially the ability to remove oneself from the inspection of more powerful commercial institutions. The consequence is that individual sovereignty is moved outside of the individual. This represents a loss of self-ownership by transmuting an individual's every move into a potential datum for observation by others. If "moral selves" are constituted by self-ownership, then Reiman (2004, p. 206) is rather prescient in pondering what it will be worth if an individual should gain the world but lose his soul. Perhaps more importantly, these processes may come to shape self-conceptions and identities, which threatens not a loss but a transformation: a human transformation into something "less noble, less interesting, less worthy of respect" (Reiman, 2004, p. 206).

The surveillance discussed above that results from the commodification of privacy model renders an individual more transparent and thus susceptible to public review. The result is an individual who will tend to conform to publicly acceptable norms and behavior. While this in itself is not necessarily a bad thing, since customary practices can be a legitimating ground, concern about public acceptance might convince individuals to act in safe ways and accept the lowest common denominator of conventionality (Gavison, 1984; Wagner DeCew, 1997). Indeed, as Kant and Mill argue, cultural blinders and cognitive interdependence prevent an individual from attaining clarity and truth. A truly autonomous person does not depend upon a social structure to establish her moral nature, but rather requires freedom, equality, and rationality, all of which

are threatened by the increased surveillance made possible by the commodification of privacy model. The result is an impoverished inner life that over time withers as it is increasingly made sense of from without (Reiman, 2004; Schoeman, 1992). The ultimate danger is that an individual's personal inner core will be stripped of its critical and creative abilities such that he is reduced to Marcuse's (1964) "one dimensional man." Any conformity spawned by the loss of privacy and self-ownership serves to retard the critical review necessary for the development of personal principles upon which an individual can act. As Arthur Miller (1971, p. 212) has argued, "[T]he basic objection to the [property] theory is that real and personal property concepts are irrelevant to the personal values that we are attempting to preserve by recognizing a right to privacy." Indeed, the potential reduced autonomy that may follow from a privation of privacy will also have implications for individual freedom, human dignity, and democracy. As Reiman (2004, p. 208) asserts, "[U]nless people can form their own views, democratic voting becomes mere ratification of conventionality, and individual freedom mere voluntary conformity." From this broader perspective then, one might assert that without an adequately protected private space human life threatens to stagnate. Moreover, if privacy is an integral component of human dignity, then the commodification of privacy and its resulting imposition of social roles, as discussed above, would render a person's dignity dependent upon the externally imposed social category a person occupies at the point of the transaction and sale of his privacy right. But if one makes a distinction between social role and a person, and further agrees that the latter maintains a sense of value independent of the former, then the person becomes the ultimate moral unit. Thus, she warrants protection and respect in her own right regardless of the functional role she inhabits in society. The commodification of privacy model ultimately fails to recognize the nature and importance of privacy in facilitating the development of the "real person," and instead subverts privacy into servicing the imperatives of the capitalist market to the peril of freedom, moral personality, and the enjoyment of a rich and critical inner life (Schoeman, 1992). Consideration of these risks demonstrates clearly that privacy interests have their genesis in the desideratum of independence and self-ownership that is substantially more comprehensive than the property interest of the commodification of privacy model can satisfy.

Conclusion

Proponents of the commodification of privacy model might assert that it merely provides remuneration and a restored degree of control over personal information that most people have been willing to surrender in the past two

decades for a cheaper and more efficient life. As such, the commodification of privacy fits well with the canons of advanced capitalism and its emphasis on consumption. However, this misses the broader point that personal information should not be commodified in service of capitalist imperatives. Ironically, it is this consumer world of freedom based on individuality and choice that facilitates a world of social control. Albeit a soft form of control rooted in consumer surveillance in order to stimulate consumer consumption, it is nonetheless one that infiltrates a wide array of everyday life and encourages consumers to internalize market behavior norms (Lyon, 1994; Poster, 1990). The commodification of privacy model would serve to reinforce this form of social control as it provides the necessary ore for data mining techniques designed to entice consumers into further spending as well as to exclude those whose records demonstrate a previous failure to conform to acceptable consuming norms (Lyon, 1994; Gandy, 1993, 1999). Such an approach would also expedite consumer surveillance, which not only renders individuals much more transparent to corporations but also reinforces extant social divisions based upon ability to consume. The result is that individuals increasingly are rendered defenseless against corporate power as the asymmetrical power relationship between the two is exaggerated in favor of the latter. The model also fails to account for the function of privacy in preserving human dignity and self-identity, especially if there is the possibility, as Geoffrey Brown has argued, that “the wrong bits of information get ... into the wrong hands, or get ... there by the wrong means or through the wrong channels” (as cited in Lyon, 1994, p. 187). The danger posed by the commodification of privacy model, by not including aspects of human dignity and identity, is that privacy advocacy could be reduced to a consumer-rights issue (Davies, 1997). This would undoubtedly have negative ramifications for the conceptual apparatus employed by conventional policy discourse and regulatory practice in respect to privacy protection. Clearly, the concept of privacy subsumes critical normative elements that render it ontologically distinct and broader than the economic instrumentalism captured by the property interests driving the commodification of privacy model.

Lyon (1994) makes an interesting point that through possessive individualism, which is inherent in the commodification of privacy, we have come full circle; in the early modern period privacy was a right of the ruling class, only later becoming associated with a broader private realm; now once again it is being placed in a privileged position. I hope that this paper has generated some consideration of how the commodification of privacy model threatens to intensify a renewed caste system of privacy and the deleterious implications this will have for both individuals and society at large.

Notes

1. cf. Flaherty, D. (1972). *Privacy in colonial New England*. Charlottesville: University of Virginia Press; and Moore, B. (1984). *Privacy: Studies in social and cultural history*. Armonk, NY: M. E. Sharpe, Inc., which considers the nature and meaning of privacy in a number of ancient societies.

2. cf. Kang, J. (1998). Information privacy in cyberspace transactions. *Stanford Law Review*, 50, 1193–1294 (who proposes that privacy can be protected in cyberspace by treating it as a marketable commodity that would allow individuals to impose limits on the use of their information); Rule, J., & Hunter, L. (1999). Towards property rights in personal data. In C. J. Bennett, & R. Grant (Eds.), *Visions of privacy: Policy choices for the digital age* (pp. 168–181). Toronto: University of Toronto Press (who propose creating a property right over commercial exploitation of personal information); and, Laudon, K. C. (1996). Markets and privacy. *Communications of the ACM*, 39 (9), 92–104 (whose model will provide the basis for critique within this paper).

3. cf. Bennett, C. J., & Raab, C. D. (2003). *The governance of privacy: Policy instruments in global perspective*. Hampshire, Great Britain: Ashgate, for a critical assessment of transnational data flows.

4. Anthony Giddens (1985) asserts in *The Nation-State and Violence* that surveillance is one of the four central institutions of modernity.

5. cf. Bloustein (1964) who has argued persuasively from a juridical standpoint about the role of privacy in facilitating individuality and human dignity. Privacy as an aspect of human dignity: An answer to Dean Prosser. *New York University Law Review*, 39, 962–1007; Bloustein, E.J. (1978). Privacy is dear at any price: A response to Professor Posner's economic theory. *Georgia Law Review*, 12, 429–453. This is in contrast to much of the legal literature that takes as its starting point the notion of privacy articulated most famously by Justices Warren and Brandeis as the “right to be let alone.” Reprinted in Warren, S.D., & Brandeis, L.D. (1984). The right to privacy [the implicit made explicit]. In F.D. Schoeman (Ed.), *Philosophical dimensions of privacy: An anthology* (pp. 75–103). New York: Cambridge University Press.

6. I am indebted to Nick Dyer-Witheford for suggesting this area of critique while reviewing an earlier draft of this paper.

7. J.S. Mill, in *On Liberty* (1859), admonishes his readers about the value of freedom from overreaching social influence. Ferdinand Schoeman also discusses the value of privacy in protecting individuals from the overreaching social control of others. In his book, *Privacy and Social Freedom* (1992), Schoeman cogently argues that privacy enhances and facilitates, albeit not by itself, the development of human dignity by freeing people from social control.

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