



Surveillance Capitalism and Privacy:

Exploring Explanations for the Failure of Privacy to Contest
Surveillance Capitalism and the Implications for Democracy

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Abstract

This paper explores the tension between privacy and surveillance capitalism and seeks to give explanations why privacy is not effective in limiting the influence of surveillance capitalism on personal autonomy and democracy. The methodology involves a deconstructive reading of the theories of privacy and surveillance capitalism. The analysis finds that there are (I) lacking means to control one's subjection to data extraction that lead to a loss of privacy and autonomy, (II) social, psychological, or cultural influences determine the conception of privacy, (III) privacy management is individualistic and needs transparency of data-processing to function, and (IV) what constitutes a private situation is dependent on existing norms. The analysis further establishes that the foundation of democracy is at risk when privacy, and as such personal autonomy, are threatened. The analysis utilizes, among others, ideas of Marx and Foucault to explain the weakness of privacy. The findings suggest that the threat posed by surveillance capitalism towards autonomy and democracy should be framed as problem of liberty instead of privacy.

Keywords: surveillance capitalism, privacy, autonomy, democracy

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Table of Contents

ABSTRACT	- 1 -
TABLE OF CONTENTS	- 2 -
1 INTRODUCTION.....	- 3 -
1.1 RESEARCH QUESTION.....	- 4 -
1.2 CHAPTER OUTLINE.....	- 4 -
1.3 MATERIAL	- 5 -
1.4 DELIMITATIONS	- 5 -
2 REVIEW OF PREVIOUS RESEARCH.....	- 7 -
2.1 SURVEILLANCE (CAPITALISM).....	- 7 -
2.2 PRIVACY.....	- 8 -
3 THEORY.....	- 11 -
3.1 CAPITALISM	- 11 -
3.2 SURVEILLANCE CAPITALISM	- 12 -
3.3 PRIVACY.....	- 17 -
3.4 DEMOCRACY	- 18 -
3.5 AUTONOMY.....	- 20 -
4 METHODOLOGY	- 22 -
5 ANALYSIS	- 24 -
5.1 PART I.....	- 24 -
5.1.1 <i>Analysis of Westin’s Theory of Privacy</i>	- 24 -
5.1.2 <i>Analysis of Altman’s Theory</i>	- 25 -
5.1.3 <i>Analysis of Petronio’s Communication Privacy Management (CPM) Theory</i>	- 26 -
5.1.4 <i>Analysis of the Restricted Access and the Restricted Access/Limited Control (RALC) Theory by Moor and Tavani</i>	- 27 -
5.2 PART II.....	- 28 -
5.2.1 <i>Relevance for Democracy</i>	- 28 -
5.2.2 <i>Implications of Norms and Social, Cultural, and Psychological Influences for Privacy</i>	- 29 -
5.2.3 <i>Privacy or Liberty?</i>	- 32 -
5.3 FUTURE WORK.....	- 33 -
6 CONCLUSION.....	- 34 -
BIBLIOGRAPHY	FEL! BOKMÄRKET ÄR INTE DEFINIERAT.

1 Introduction

Historically, new technological developments have been looked on sceptically in regard to their effects on humans. One example is the criticism of the railway in the 19th century which was said to cause mental illness leading to shattered nerves and violent behaviour (Hayes, 2017).

Another example is the scepticism towards car radios in the 1930s, which were initially banned because they were seen as dangerous until a study proofed no direct correlation with accidents. (Ferro, 2016) Or consider the widespread scepticism towards vaccines, which continues today and even is on the rise as a study in Europe found (Boseley, 2019).

But what about scepticism towards so-called smart technologies? Smart cities, smart homes, smart phones, smart watches, and smart speakers are a few examples of what can be categorised as devices which together form the internet of things, or the internet of everything. These devices are connected over the internet which allows for the transmission of data in almost no time and thus forming a powerful information network in the form of a global architecture.

Or, think about social networks, online marketplaces, work spaces and other virtual platforms that have become a central element of our lives no less than the physical devices that connect us to them.

Apple alone has now 1.4 billion active devices world-wide. That is not the total sold devices, the number stands for the currently *active* devices (Clover, 2019). Facebook's user number in 2018 was as high as 2.2 billion (Disparte, 2018). Amazon, which is far more than just an online market place, has sold 100 millions of their smart assistant Alexa that comes preinstalled in devices, with the assistant being a part of more than 150 different devices on the market (Matney, 2019). Google's mobile operating system Android is now running on 2.5 billion active devices (Smith, 2019). Microsoft was just valued at more than 1 trillion USD breaking the trillion-dollar mark third after Amazon and Apple.

These services and products collect a tremendous amount of data which sustains their service, and of course there are privacy policies and regulations to protect users.

But where is the scepticism towards those technologies? Shoshana Zuboff is one scholar that has devoted her work to investigate the logic with which these corporations work. She recently established the theory of surveillance capitalism and presents a critical perspective on its operating logic. In a nutshell she finds that surveillance capitalism challenges both, human autonomy, and democratic sovereignty by means of manipulation (Zuboff, 2019b, p. 11). While this threat should be taken seriously, Zuboff claims that the categories we use to contest surveillance capitalism are

‘privacy’ and ‘monopoly’. These, she argues, not only fall short of explaining surveillance capitalism, but also in contesting the very core of it (Zuboff, 2019a, chap. 1.4.; 1.6.; 6.6.).

While Zuboff focuses on laying bare the techniques and logic by which surveillance capitalism operates, the present work aims to contribute to an explanation why privacy is an insufficient contest to it.

This is especially relevant since the right to privacy has been established in the Universal Declaration of Human Rights in 1948. Following this the right to privacy has also been incorporated into the International Covenant on Civil and Political Rights from 1966. Apart from that, privacy as a human right has been recognized regionally and nationally, such as in the European Union (Kuner, Cate, & Millard, 2011, p. 141).

Similarly, a discussion of surveillance capitalism offers the possibility to look on the matter as a problem of individual autonomy and freedom. This, as well, establishes a strong link to liberty rights, further strengthening the relevance for human rights. In addition, the view of surveillance capitalism as a threat to autonomy means that it possibly is a threat to democracy as well. Given the value that is attributed to democracy within the human rights doctrine this connection is worth exploring too.

1.1 Research Question

How can a critical examination of privacy theories, i.e. Westin’s theory, Altman’s theory, the communication privacy management (CPM) theory, and the Restricted Access/Limited Control (RALC) theory, reveal the weakness of privacy to successfully contest surveillance capitalism (as suggested by Zuboff) and how is this relevant for democracy?

The question as such, consists of two sub questions that will be explored in two parts of the analysis.

1. How can privacy theories reveal the weakness of privacy to successfully contest surveillance capitalism?
2. How is this relevant for democracy?

1.2 Chapter outline

Chapter 1 begins by introducing the general topic around the research, presenting the research question, an outline of the structure of the paper, its material, and limits. Chapter 2 provides a review of previous research in the area of surveillance (capitalism) and privacy. Chapter 3 continues

by presenting theoretical concepts of capitalism, surveillance capitalism, privacy, autonomy, and democracy. In Chapter 4 the methodology is introduced and specifically explained. Chapter 5 is divided into two parts of analysis with the second part building on the first. This chapter ends with an outlook for future work. Chapter 6 is the last chapter and concludes the present work.

1.3 Material

To answer the research question, it was necessary to establish a foundational knowledge of the contained elements. First, it was important to understand the logic of surveillance capitalism, how it works and what it does.

The material with which the theoretical account of surveillance capitalism has been presented were mainly two articles written by Shoshana Zuboff.¹ These articles have been a good source to extract the central points of the theory as they focus on the main logic of it without getting lost in detail. However, this advantage is a disadvantage at the same time, as the limited format of the articles allowed Zuboff not to conduct an in-depth discussion. For this reason, her recently published book on surveillance capitalism was used to complement the articles and fill in gaps where it seemed necessary to provide more detail and depth.²

In addition to this main material, a variety of writings have been used to establish the relevant theoretical accounts. Here, it is worth to note that not always primary sources were used, but a large part was represented by secondary sources. In addition, some internet sources were used to provide examples. While the credibility of these can be questioned, they have been selected with caution.

1.4 Delimitations

As Kuner et al. (2011, pp. 141-142) point out, there are more forces shaking the foundations of privacy than just commercial interests. Governmental interests to collect data about their population and keep records have been subject to criticism too. Similarly, but distinctly, public security interests have a direct impact on privacy. This was the case in the aftermath of the September 11 terrorist attacks when the surveillance industry flourished³ (Galič, Timan, & Koops,

¹ The two articles are titled “Big other: surveillance capitalism and the prospects of an information civilization” (Zuboff, 2015) and “Surveillance Capitalism and the Challenge of Collective Action” (Zuboff, 2019b).

² The book is titled “The age of surveillance capitalism: the fight for the future at the new frontier of power” (Zuboff, 2019a).

³ There is also an element of threat to democracy in extending surveillance. Laas-Mikko and Sutrop (2012, p. 370) find that there is a paradox that privacy is limited to protect a democratic society from security threats, while at the same time it is essential for autonomy and the foundation of the democratic society. The limitation of privacy as such is

2017). The perceived security threat was used to legitimately extend state surveillance. While the surveillance of government agents is not part of this paper, there is an important link to note that comes with it, namely regulatory changes. These changes are important insofar, as they helped pave the way for surveillance capitalism by establishing a state of surveillance exception (Zuboff, 2019a, chap. 4.4.; 6.6.). While this is certainly an important aspect in regard to democracy, this part is only relevant for the discussion here, as it enabled surveillance capitalism. Therefore, the main goal is to explore the connection between surveillance capitalism and privacy, the interests of states in surveillance will not be represented to the extent it deserves.

Another way of establishing an important link between digital services that are driven by surveillance capitalism and human rights, is to focus on their effect on health, in particular mental health. While this psychological component is certainly also an aspect of privacy that deserves attention, the scope of the present paper does not provide a platform for this important discussion.

possibly a greater threat to democracy than the security risk. As such, security threats can provoke irrational decisions that threaten democratic principles.

2 Review of Previous Research

2.1 Surveillance (Capitalism)

Shoshana Zuboff first defined surveillance capitalism in a 2015 article as a “new form of information capitalism [that] aims to predict and modify human behavior as a means to produce revenue and market control” (Zuboff, 2015, p. 75). In this article, she begins to describe this new logic of capitalism by drawing heavily on the example of Google Inc. and goes on to talk about the consequences of it. According to Zuboff, a new power is emerging, called the ‘Big Other’ which leads to behaviour prediction and modification.

In a 2019 article Zuboff introduces surveillance capitalism as “challenging human autonomy and democratic sovereignty” (Zuboff, 2019b, p. 11). In this article she continues to further theorize surveillance capitalism. While, she reuses examples from Google, she brings in more examples such as Facebook. New in this article is also the concept of ‘instrumentarianism’, which unlike totalitarianism does not act through violence, but behavioural modification (Zuboff, 2019b, p. 20).

Nick Couldry is one scholar who has since picked up on the notion of surveillance capitalism and its implications for autonomy and democracy. He presents a discussion that focuses in particular on the negative implications of surveillance capitalism on democracy. The route he chooses to formulate the problem is, as Zuboff suggested, to look on the connection between autonomy and democracy. As such he finds that democracy is founded in the individual’s ability and for the purpose of individuals to voice their own will. If surveillance capitalism can interfere on the deepest level of the inner self, it does not only threaten personal autonomy, but also makes democracy pointless (Couldry, 2017).

The emergence of second-generation biometric technologies, which focus on behavioural patterns of people for profiling and subsequently predicting actions and behaviours for security purposes, is what Laas-Mikko and Sutrop (2012, pp. 373-374) are concerned with. Such a practice, they warn, might lead to “social classification and stigmati[s]ation” of persons and reinforcement of inequalities (Laas-Mikko & Sutrop, 2012, pp. 376-377). Especially the practice of putting people into categories and labelling them, as pointed out by Manders-Huits and van der Hoven, has severe implications for those affected. They also suggest that privacy demands “informed consent” and notification of data processing. However, in the specific “case of behaviour detection technology” an implementation of informed consent on an individual basis is not deemed possible (Laas-Mikko & Sutrop, 2012, pp. 377-379).

Laas-Mikko and Sutrop (2012, p. 377) conclude that “surveillance and dataveillance violate both privacy and autonomy” which they see as individual values and values central for a functioning democracy.

Christian Fuchs (2011) provides a balanced view on surveillance. Whilst he broadly refers to surveillance (including non-digital forms) of both states and corporations, he points to the harms surveillance of citizens can cause, while at the same time arguing for more surveillance of the rich and corporations for the sake of transparency. However, he is in line with Zuboff’s view that surveillance of consumers and workers is used to find out interests and behaviours or to control workers for capital accumulation (Fuchs, 2011, p. 230).

2.2 Privacy

Paul Voice, in summarising the argumentation around privacy, points to the necessity of privacy for the development of a large number of attributes such as “making and sustaining intimate relations”, developing “freedom of thought and conversation”, and “autonomy”(Voice, 2016, p. 273). Consistent with the latter, Paul Roberts argues that privacy provides a way to protect one’s autonomy as it provides the freedom from a dominating power (Mokrosinska, 2018, p. 126). Similarly Laas-Mikko and Sutrop (2012, p. 370; 373), by drawing on Gavison, Kupfer, and Solove, display privacy as promoting “liberty, autonomy, selfhood, and human relations” while contributing to a free society. They cite Ruth Gavison saying that privacy strengthens moral autonomy which is said to be a central requirement of democracy. Further, Voice recalls that privacy has been seen to prevent from “decision interference”, that is the substitution of individual judgements by the state (Voice, 2016, p. 273). As Herman T. Tavani (2007, p. 9) notes, it is one of Gavison’s theory’s strengths, that it does not confuse privacy with autonomy but creates a clear separation of the two. James H. Moor (1997, p. 29) investigates the grounding of privacy in terms of its instrumental and intrinsic values, as well as a core value. He finds that there is support for privacy to be of instrumental value, such as for protection of harm. He also notes that the attempt to establish the intrinsic value of privacy by linking it to autonomy, which is an intrinsic value itself, such as proposed by Deborah Johnson is a clever way to do this. However, he finds that privacy is not a necessary condition for autonomy (Moor, 1997, pp. 28-29).

Zuboff (2015, pp. 82-83) takes a similar notion of privacy as Laas-Mikko and Sutrop (2012) and notes that the right to privacy enables choice, which is whether one wants to keep information private or to share it. Thus, it follows that ‘privacy rights’ make possible ‘decision rights’ which are presenting one with the right to decide where to draw the line between providing information and

keeping it secret. As such, for her, surveillance leads to a redistribution of privacy rights, because those who have the power to decide are now the new holders of the rights. Zuboff talks about “extraction” of rights in this connection (Zuboff, 2015, p. 83).

While Zuboff (2015, p. 86; 2019b) focuses on surveillance capitalism as the main threat to privacy, she is not blind to the threat of state surveillance. For Laas-Mikko and Sutrop (2012, p. 370), however, surveillance conducted by government institutions, often in defence of security and to fight terrorism, is the main threat to privacy. This threat arises, they argue, because of the risk of leaking the collected information leading to overriding the subject’s decision on who has access and thus violating privacy rights.

Laas-Mikko and Sutrop (2012, p. 377) argue for a defence of privacy; however, they note that privacy restrictions are understandable in light of security risks. Therefore, privacy should not be understood as an absolute value which deserves absolute protection. However, any restrictions on privacy that are based on threats should be assessed for each case individually, in a well-reasoned manner, and proportionate to the danger. Voice (2016, p. 272) as well notes that privacy is not a universally accepted value and takes this as a departure for his discussion of privacy.

Tavani (2007) takes the threat to privacy as point of departure in a quest to establish an adequate theory that is suited to especially the challenges of the information age. In doing so, he starts by identifying main philosophical and legal theories which he groups into the categories of “nonintrusion, seclusion, limitation, and control theories” (Tavani, 2007, p. 2). Some theories are normative, and some are descriptive. Sometimes privacy is confused with or described as “liberty, autonomy, secrecy, and solitude” (Tavani, 2007, p. 3). Tavani regards none of the previous theories as adequate to deal with “online privacy concerns” and thus suggest to use the RALC (Restricted Access/Limited Control) theory, first established by Moor and later expanded by Moor and Tavani (Tavani, 2007, p. 13).

In contrast to Tavani, Margulis focuses primarily on privacy as psychological concept, whilst pointing to the difficulties to define its boundaries in philosophical discussions (Margulis, 2011, p. 14).

Christian Fuchs (2011), in contrast to all above, represents the most critical perspective on privacy. By first identifying various typologies of privacy, he criticises that many of them lack a ‘theoretical criterion’ that distinguishes them (Fuchs, 2011, p. 222). Further, he introduces the notion of ‘privacy fetishism’ following Karl Marx’s idea of fetishist thinking and continues to elaborate on the many negative effects that have been attributed to privacy in the literature. He finds that privacy is not universally accepted and that there should be limitations of privacy for the benefit of the public good. For him it is important to consider the history of privacy and its relation

to capitalism and as such take the political economy of capitalism as context for analysis. (Fuchs, 2011, pp. 225-226) For Fuchs privacy is a capitalist mean to create and hold private property (Fuchs, 2011, p. 230). Therefore, he suggests a 'socialist privacy concept' which aims to eliminate privacy that protects wealth, but grants privacy to those prone to corporate surveillance (Fuchs, 2011, pp. 231-232). Privacy has also been called an 'elusive' (Kuner et al., 2011, p. 141) and a 'fuzzy' concept as there arguably exist a number of theories that all fail to provide an adequate definition of all the nuances privacy contains (Vasalou, Joinson, & Houghton, 2015, pp. 918-920). Based on that criticism of existing concepts of privacy Vasalou et al. (2015) argue that there is a need for a more inclusive and rich definition of privacy. By conducting an empirical study, they provide a prototype of privacy that can be used to inform both theorists and practitioners.

3 Theory

This chapter will give an overview of theory concepts and discussions within those to provide a foundation for understanding their relations. It will begin by presenting capitalism and surveillance capitalism. The introduction to privacy that follows is held brief since privacy theories will be presented in more detail in the analysis part. It follows an account of democracy, and lastly autonomy.

3.1 Capitalism

Surveillance capitalism is seen as a (neo-)Marxist approach to surveillance (Galič et al., 2017, p. 24) and it therefore seems useful to depart from a Marxian description of capitalism to establish a reference to which surveillance capitalism can be compared later on.

Karl Marx identified five ‘modes of production’: the primitive communist, ancient, feudal, capitalist, and communist modes. These modes of production differ in the way they organize production. The non-communist modes are divided into classes, where one class own the means of production. The majority of people belong to the class that do not own the means, they are, however, performing the main work of production. This means that in the ancient, feudal, and capitalist modes, the non-working minority who owns the means of production is exploiting the working majority who produces material goods (Jones, Bradbury, & Le Boutillier, 2011, p. 33).

Considering the following discussion, it seems worthy to explore the ancient mode of production and absolutely necessary to also explore the capitalist mode of production further.

The ancient mode of production is based on slavery. It is the first mode of production in history that had the necessary previous technological development that allowed for specialisation of labour. This means that a *division of labour* was possible and allowed for a non-producing class to emerge, the *masters*. The other class, the *slaves*, are owned by the masters as their productive property. This mode of ancient production takes place in form of involuntary labour by the slaves and is highly dependent on the power to control them. In Ancient Greece and Rome, two classical examples where this mode of production existed, the end of slavery was marked by loss of coercion and control over the slaves (Jones et al., 2011, pp. 34-35).

The capitalist mode of production is divided into two classes, the *proletariat* and *bourgeoisie*. The labouring class, which again provides the productive force is called the proletariat. The owners of the means of production are the bourgeoisie (Jones et al., 2011, pp. 36-37).

There is probably no better way to present the nature of capitalism more concise and precise than done by David Walsh:

“Capitalism, as a mode of production, is an economic system of manufacture and exchange which is geared towards the production and sale of commodities within a market for profit, where the manufacture of commodities consists of the use of the formally free labour of workers in exchange for a wage to create commodities in which the manufacturer extracts surplus value from the labour of the worker in terms of the difference between the wage paid to the worker and the value of the commodity produced by him/her to generate that profit. So, Marx argues, the labour of the worker is objectified through its sale to and use by the manufacturer, and thus the worker is alienated from his or her own existence as a subject and the life of the worker is determined by the fate of the commodities which he or she produces for the market, which is governed by the laws of supply and demand and the search for profit on which the manufacture of commodities depends in the capitalist system.”

(Walsh, 1998, p. 16)

What is important and should be stressed especially is the notion of surplus value, which is generated at no cost for the bourgeoisie (here the manufacturers as the owners of the means of productions). Because this profit is made of the labour of the worker it is seen to be a product of exploitation. The capitalist mode of production is thus based on the same character as the ancient mode of production in terms of power relations, however, in a less obvious form (Jones et al., 2011, pp. 36-37).

3.2 Surveillance Capitalism

How did surveillance capitalism come to exist? The foundation on which surveillance capitalism is built is user data. Google was one of the first to discover the power of the data they can access. User data, such as search queries, were stored and initially regarded as waste or by-product, even termed ‘data exhaust’. The first way Google put the data to use was to use it to improve the search results which created value for their users. Zuboff calls this procedure “behavio[u]ral value reinvestment cycle” (Zuboff, 2019b, p. 12). It describes the reinvestment of user inputs to improve the value of the output for the user. However, because it is a closed cycle of value creation (by the user for the user), offering this free service did not yield revenue for Google. For Zuboff (2019b, pp. 12-13) the turning point and birth mark of surveillance capitalism is when behavioural data was first employed for ad-matching. This meant, that the excess data was now analysed, not only to generate accurate search results, but also to predict the relevance of advertisement. The general practice at that time was that advertisers selected themselves which search should include their

advertisement. This practice can be compared with the traditional way of marketing which is based on educated guessing of how the target audience may look. By using the behavioural data of their users, Google was able to complete this task of matching potential buyers with relevant advertising much better and eventually did not only sell the space for advertising, but also the effective placement of advertisement.⁴

How is the data collected? The examples of smart devices and virtual platforms that were mentioned in the introduction are the technology with which big data is collected. Zuboff (2015, p. 75) sees big data neither as a technology nor an effect of the technology. For her, big data originates in the social. The technology is merely an interface, a mechanism to translate, the social reality into data. Thus, big data provides data image of the lived reality of users.

Because 'big data' is the resource on which surveillance capitalism feeds on it can be seen as the foundation of surveillance capitalism (Zuboff, 2015, p. 75). Information technological automation creates new information that gives insight into deeper levels of activity than previously was possible, and the logic of accumulation, inherent in capitalism, dictates to use this information to foster growth. In times of the 'information civilization' this happens now on an unprecedented level and global scale (Zuboff, 2015, pp. 76-77). Central to the theory is (big) data, its extraction, and analysis.

Where is the data coming from? The data stems from (1) "computer mediated transactions", (2) sensors e.g. the internet of everything, (3) corporate and government databases, (4) private and public surveillance cameras, (5) "non-market activities" meaning "small data from individuals' computer-mediated actions and utterances in their pursuit of effective life" (e.g. "Facebook 'likes,' Google searches, emails, texts, photos, songs, and videos, location, communication patterns, networks, purchases, movements, every click, misspelled word, page view, and more." (Zuboff, 2015, pp. 78-79)) This architecture that enables an interface between the 'real' world into the digital is called 'extraction architecture' (Zuboff, 2019b, p. 16).

What is meant by extraction? Extraction is characterized through missing reciprocities. Contrary to classic capitalist firms there is no direct connection between the consuming population and the firm which once helped establish a middle class constituting important employees and customers. That means the population once was benefiting from production in the form of being employed and able to consume the products. Now extraction happens only to the benefit of one side, without any means of influence by the other because the production is almost entirely

⁴ An example for the two different techniques today are the different practices of YouTube and Netflix, two streaming services. On YouTube the thumbnail, a still picture that represents the video, is set by the uploader of the video. On Netflix, in contrast, the thumbnails are selected by an algorithm, that based on the user's preference, selects the one that the user is most likely to click on. On YouTube all users have the same experience, but on Netflix the experience is individualised with the aim to make every thumbnail as appealing as possible.

automated and the products are sold to other corporations instead of workers (Zuboff, 2015, p. 80).

For Zuboff this is where the threat to democracy is located, considering the historical relationship of market capitalism and democracy (Zuboff, 2019b, pp. 23-24). She points to the development of democracy in 19th century Britain, where non-violent reforms were enabled by inclusive economic institutions, to show the interdependence between the masses and industrial capitalism.

As described above, the extraction of data doesn't primarily happen to improve the service for the user, as it would be in a closed value reinvestment cycle. Instead the aim is to extract behavioural data for the benefit of the paying customers (advertisers). This 'raw material' of behaviour is extracted analogue to the extraction of land or natural resources in industrial capitalism which is claimed as property.

How is the data analysed? Lastly, the analysis of the extracted data takes place. Here, the once 'private' and intimate information is processed and turned into objective data that is context independent. This data is used to present the user with new experiences which in turn creates new data for analysis in a never ending loop (Zuboff, 2015, pp. 80-81). The analysis part is marked by the production of outcomes, by predicting behaviour and eventually shaping it to reach the desired outcome.

Central to this 'hidden' logic is how it is externally operationalised: through monitoring, personalization and communication, and continuous experimentation. The ability to monitor openly, for example as part of the service (location, duration, and time of use etc.), eliminates the need and possibility for trust, which bears social consequences because traditional contracts based on trust are no longer needed (Zuboff, 2015, pp. 81-82). Personalization and communication is one way to extract human experience and behaviour through digital personal assistants like Alexa, Siri, or Google Assistant (Zuboff, 2015, pp. 83-84; 2019b, p. 15). Continuous experimentation, for example providing adaptive content or experience, is yet another form to become better at predicting and modifying behaviour. One example of this would be to show different products or recommendations as search results to find out what works best, just like the previous Netflix example (Zuboff, 2015, pp. 84-85; 2019b, p. 18).

Under this logic a surplus of behavioural data is needed to make better predictions and create more revenue. Thus, the volume of the behavioural data input is going to be increased. An increased need for data input leads to a competition in gathering more behavioural data and results in an automation of tracking and hunting for behavioural data. The 'extraction architecture' is scaled up under the logic of *economies of scale* (Zuboff, 2019b, p. 16).

But there are limits to this form of extraction. While more extraction can provide more raw material for an analysis and future prediction, it is not the quantity alone, but also the quality of the data that will allow more accuracy. As Zuboff says, the best predictions approximate observations. This means that the type of data needs to be extended and is described as *economies of scope*. The realisation of increased scope follows two steps.

First, the data collection extends from the “virtual world into the “real world” of embodied human experience” (Zuboff, 2019b, p. 16). While the extraction so far has only taken place online by inputs, like searches, likes, clicks etc., an extension to the real world means that data is going to be collected in ‘offline’ situations. This means that the user is not required to engage actively, but that sensors and devices extract any kind of physical data they can get. “Surveillance capitalists... want... your bloodstream and your bed, your breakfast conversation, your commute, your run, your refrigerator, your parking space, your living room, your pancreas.” (Zuboff, 2019b, p. 17)

Second, this form of extraction exposes a deeper level of information, namely the “intimate patterns of the self” (Zuboff, 2019b, p. 17). “Facial recognition and affective computing to voice, gait, posture, and text analysis that lay bare ... personality, moods, emotions, lies, and vulnerabilities.” (Zuboff, 2019b, p. 19) The economies of scope dictate that it is not enough to know user preferences in terms of search queries, ordered products, or clicks. Even the behavioural information that can be extracted from data about location in space and time is limited. It follows logically that the resolution of data extraction needs to be increased, to be able to zoom deeper and make details visible that allow more and better predictions. However, even that is not enough as the limits are reached.

As an answer to the question how this can happen Zuboff states: “Economies of scale and scope ignored privacy norms and laws, relying on weak legitimation processes characteristic of meaningless mechanisms of notice and consent (privacy policies, end-user agreements, etc.) to accumulate decision rights in the surveillance capitalist domain.” (Zuboff, 2019b, p. 18)

What is more accurate than a prediction that equals an observation? The answer is, what Zuboff calls *economies of action*. While economies of scale and scope are well known terms for industrial logics, “economies of action are distinct to surveillance capitalism and its digital milieu.”(Zuboff, 2019b, p. 17) Economies of action are defined through the process of behaviour modification. They allow for intervention in behaviour instead of prediction, thus taking a further proactive stance towards revenue creation. According to Zuboff these economies of action operate differently than conventional attempts to shape behaviour of customers like priming, suggestion (see the Netflix example earlier) and social comparison. What makes them different is the digital architecture, a ubiquitous network and stream of data input, that allows automated monitoring and

shaping of human behaviour continuously with to this time unknown “accuracy, intimacy, and effectiveness” (Zuboff, 2019b, p. 17). This is done by configuring machine processes to intervene in real time to tune, herd, nudge and condition people, whether it be individuals, groups or populations (Zuboff, 2019a, chap. 7.1.). The forms of intervention are various and subtle like the “inserting a specific phrase into your Facebook news feed, timing the appearance of a BUY button on your phone with the rise of your endorphins at the end of a run, shutting down your car engine when an insurance payment is late, or employing population-scale behavioural micro-targeting drawn from Facebook profiles.” (Zuboff, 2019b, p. 17)

What started with extraction for the sake of *knowing* has now become extraction for the sake of *doing*. The extraction architecture is now complimented by an execution architecture. Together these architectures constitute the ‘means of behavioural modification’. Industrial capitalism was driven to continuously intensify the means of production. Surveillance capitalism is now following the same logic to intensify the means of behavioural modification. Zuboff notes, however, that while the architectures and the means of behavioural modification are entirely dependent on the ubiquitous network of devices (the internet of things/everything) it is possible to imagine such a network without surveillance capitalism (Zuboff, 2019b, p. 18).

Where the surveillance capitalist practices connected to economies of scale and scope seemed already problematic, economies of action go even further: “These new systems and procedures take direct aim at individual autonomy, systematically replacing self-determined action with a range of hidden operations designed to shape behaviour at the source.” (Zuboff, 2019b, p. 18)

Zuboff provides some examples of the means of behavioural modification that range from A/B testing, over manipulating emotions, to social herding. To provide one specific example Zuboff quotes from the findings of researchers at Facebook: “Emotional states can be transferred to others via emotional contagion, leading people to experience the same emotions without their awareness...Online messages influence our experience of emotions, which may affect a variety of offline behaviours.” (Zuboff, 2019b, pp. 18-19)

But the manipulation is not just limited to influencing one’s mood, it extends to physical space as well. An example for this is the augmented reality game Pokémon Go, which through game elements steers players to defined places, a process Zuboff calls social herding. This means that players are herded to places where they buy food, drinks or do other forms of shopping. These techniques of manipulating consumer behaviour are a process of constant innovation with little limits, and they always are deployed outside of the target’s (the human’s) awareness (Zuboff, 2019b, p. 19).

Zuboff doesn't stop here. She regards the power to do so a pre-requirement of behaviour modification. In a quest to define the power she looks for a connection to the already existent concept of totalitarianism, which has been used to frame the problem and was referred to as 'digital totalitarianism'. However, Zuboff objects to this categorisation and instead argues that the current power is too distinct from totalitarianism and should therefore be described differently. (2019b, p. 19)

As such the ability to modify behaviour is what Zuboff coins *instrumentarian power*. This power constitutes "*instrumentarianism, defined as the instrumentation and instrumentalization of human behavior for the purposes of modification, prediction, monetization, and control.*" (Zuboff, 2019b, p. 20)

3.3 Privacy

Warren and Brandeis argued for the recognition of a right to privacy in 1890 as a response to new technology - the camera. They were concerned with the invasion of one's privacy and used the vague definition of privacy as 'right to be let alone'. This kind of definition can be grouped into the *nonintrusion* category of privacy definitions. It is ambiguous because not to be let alone is not the same as invading one's privacy. Starting a conversation on the street would hardly be seen as invasion of one's privacy, yet it would violate a right to be let alone. Equally, secretly spying on someone means to let him or her alone but might well violate his or her privacy (Moor, 1990, pp. 70-72).

Apart from the above-mentioned critique of early legal conceptions of privacy, Moor (1990, pp. 72-74) provides another flawed example. The example he presents is a court case from 1965 where privacy is connected to constitutional law in the U.S.. According to Moor, in *Griswold v. Connecticut* the decision reflects a confusion of the two concepts privacy and liberty. In the case, marriage was said to be protected by privacy and as such the use of contraceptives a private matter. This fusion of the two concepts is dangerous because privacy should not be confused with liberty, or it creates the possibility to shield harmful actions under the cover of privacy.

With the birth of powerful information technology, the philosophical discussions and theories of privacy increased notably. Two categories that contain an information component focus on *control of information* on one side and *undocumented personal information* on the other. One example for the control of information type is the theory proposed by Alan Westin which will be presented in more detail later.

Laas-Mikko and Sutrop (2012) build on normative theories of privacy. As such they take privacy as a right to decide upon the extent to what others have access to information of or space around oneself. This is in line with what Tavani (2007) groups into the *restricted access* theories.

Voice (2016), as well, uses privacy as a normative concept. He notes that the value we perceive of privacy is determined by how we understand it. While Voice is aware of the special component of privacy, in his paper he solely focuses on the information component. What is meant by information component is the knowledge other people or institutions have about certain information. Voice defines a “state of privacy” as others not being in a “cognitive relationship” with the information.

Fuchs, conducting a ‘Marxian analysis’ of privacy, finds that the positive side of privacy is overemphasized (‘fetishized’) and thus takes on an ideological character which masks negative consequences of capitalism (2011, p. 231). In a different account, Fuchs takes a similar stand and describes “financial privacy [as] an ideological mechanism that helps reproduce and deepen inequality.”(Fuchs, 2012, p. 150)

Zuboff presents privacy as defined by U.S. Supreme Court Justice William O. Douglas from 1967. He framed privacy around the choice of an individual to disclose or reveal beliefs, thoughts, and possessions. Zuboff argues based on this, that privacy is essentially a *decision right* which is claimed by surveillance capitalism. This leads, according to her, to a ‘redistribution’ of privacy, which in effect means that the decision rights of many people to decide over their data, are now held by a few surveillance corporations (Zuboff, 2015, pp. 82-83; 2019b, p. 15).

3.4 Democracy

Democracy has been discussed extensively in academic literature. Among many Cunningham (2002, pp. 2-6) and Crick (2002, p. 1) point to a lacking consensus among those who discuss democracy as a concept. As such, discussions around it are marked by ambiguity. While Crick (2002, p. 5) points to the three different accounts of democracy as “principle or doctrine of government”, “institutional arrangements”, and “type of behaviour”, Cunningham (2002, p. 11) on the other hand draws a triangle of “meaning of democracy”, “conduct/institutions of democracy”, and “value of democracy”. Similarly, David Miller (1993, p. 74) points to the separation of institutions and their “regulative ideals”.

Katrin Laas-Mikko and Margit Sutrop (2012) while engaging with democracy only briefly, draw on Aristotle’s ideas of democracy. They attempt to establish a link of democracy to privacy and autonomy. Laas-Mikko and Sutrop (2012, p. 372) find that for Aristotle practical reason was a

requirement for deliberation about collective ends and that this reason is developed through self-governance, which stresses the importance of individual autonomy and integrity.

There is also an element of critique in the literature about democracy. One critique follows Alexis de Tocqueville's thought and concerns the "tyranny of the many", which postulates that minorities are at risk of being subjected to an unjustified ruling by the majority (Crick, 2002, p. 63; Cunningham, 2002, pp. 15-16). Similarly, diversity of culture and thought are dependent on the will of the masses and might be diminished when the masses show no interest in granting the freedoms to enjoy these (Cunningham, 2002, pp. 16-17).

While earlier criticism questioned whether ignorant people possess the rationality that is necessary to make decisions, central to the contemporary criticism is the inconsistency in preference rankings of individuals or manipulation as a form of irrationality (Cunningham, 2002, p. 22; Miller, 1993, pp. 79-81). Additionally, if there is no reasoned deliberation process towards the common goal, (due to lacking participation capacities such as autonomy and integrity) political, economic, or other interest groups can promote their interests disproportionately (Laas-Mikko & Sutrop, 2012, p. 373).

In response to the dangers pointed out by Tocqueville, John Stuart Mill attempted to combine democracy with liberty, or rather find a balance between them (Crick, 2002, pp. 58-59; Cunningham, 2002, p. 27). In Mill's view, the only case where exercise of power over citizens is legitimate, is to prevent harms from others. Thus, the most important liberties that should be protected are "freedom of conscience, thought and feeling, holding and expressing opinions, pursuing one's life plans, and combining with others for any (nonmalicious) purpose"(Cunningham, 2002, p. 28). Whilst Mill didn't work out how such liberties should be protected, he did favour a distinction between the public and private realms. He also thought a *representative democracy* to be encouraging for people to develop their ability to govern themselves (Cunningham, 2002, p. 28). However, as Cunningham writes, while most theories would not make any changes to Mill's portrayal of liberalism and democracy, there is much room for differences in how the liberties should be preserved and democracy should be structured.(Cunningham, 2002, p. 28) Miller defines the aim of liberal democracy as aggregation of "individual preferences into a collective choice" in the best possible way (Miller, 1993, p. 75).⁵

Similarly, *deliberative democracy* also begins with a conflict of political preferences which need democratic institutions to be resolved. In contrast to the liberal idea of democracy, deliberative democracy requires rational argumentation to convince different thinking parties to change their view and eventually reach agreement on the issue (Cunningham, 2002, p. 163; Miller, 1993, pp. 76-

⁵ In the form of a very simple example this would mean to give every individual's preference equal weight by voting.

77). The advantage of deliberative democracy is that it can find a final solution which gives respect to different dimensions of a problem. In the process of finding, it also identifies the core problems, which can be used to form a decision that pleases as many people as possible, in contrast to pleasing a simple majority (Miller, 1993, pp. 86-88).

According to Voice, freedom and equality are fundamental to what he calls ‘full deliberative democracy’ and are based on the capacity to act on one’s own choices, privately and publicly (Voice, 2016, p. 277).

3.5 Autonomy

Christman (2013), in a historical review of autonomy, states that for ancient philosophers the concept of autonomy was connected to independent city-states, but not relevant for individuals. This meant that little value was placed on human freedom, in the sense of making independent choices, as part of the ideal human life by Plato or Aristotle. Interestingly, however, was the prevalence of the idea that free was the one who was not a slave or ‘barbarian’. Only after the Renaissance, began the formation of a concept similar to the contemporary understanding of autonomy. This shift had to do with the ideas of reason and thinking for oneself as a necessity to form principles of morality, rather than finding them in nature or divinity (Christman, 2013, pp. 692-695).

Particularly important here are Jean-Jacques Rousseau and Immanuel Kant. Rousseau set the stage for the idea that freedom meant that moral beings act according to self-imposed laws. Thus, for Rousseau freedom equals autonomy or self-government. Kant, further developed these ideas, stressing the idea of *moral* principles, that one can impose on oneself and abide by. This form of autonomy can be called moral autonomy in contrast to personal autonomy. Personal autonomy describes the ability to carry out actions that are based on values, desires, or principles which are not necessarily moral but also not externally imposed. After Rousseau and Kant, it was John Stuart Mill who strongly influenced the idea of autonomy, in particular personal autonomy. For Mill and most contemporary writers on autonomy, it is the element of self-governance that is based on one’s own values and no-one else’s (Christman, 2013, pp. 697-698).

In reviewing contemporary discussions of autonomy, Christman (2013, pp. 699-700) points to the distinction of autonomy with freedom. Freedom meaning the ability to carry out decision, and autonomy referring to the process of formulating own decisions.

In liberal democratic theory, freedom and autonomy have been attributed different importance as well. For thinkers like Kant, Rawls, or Kymlicka, one needs to be able to question one’s own

will to continue a project at any time. Others, like Hobbes, regard a person as free even under the influence of externally dictated preferences (Cunningham, 2002, pp. 35-36).

In addition to the historical and contemporary review, Christman (2013, p. 706) presents autonomy as political idea, where it is associated with collective self-government and democratic arrangement. Zuboff (2019b, p. 19) adapts such view on decision rights and individual autonomy and regards them as essential parts that guarantee a functioning democratic society.

4 Methodology

The methodology used in this paper is derived from deconstructive methodology. Deconstruction is commonly associated with Jacques Derrida and is a form of giving meaning to text that goes beyond the obvious meaning of the text. (Rolfe, 2004, p. 274)

Mazzei conceptualized “deconstructive methodology as a strategy toward opening up the binaries and the boundaries of data, speech, voice, and meaning in order to “hear” that which has been previously discounted, disregarded, or unobserved.” (2007, p. 71) The deconstructive reading of a text allows one to discover meaning, not by explicitly looking for what is expected to be found, but rather finding the non-expected. It “engages a deconstructive openness to expect, even encourage, another interpretation of the text, a competing interpretation of the text, an attention to the “echoing” voices in the layers beneath the surface.”(Mazzei, 2007, pp. 15-16)

However, with all its openness there is an element to deconstructive reading that can be pinned down. While it is a form of writing that has no preconceived goal, the process of writing, (here the result of this writing can be found in form of the analysis) creates a second text which in turn can be deconstructed. (Rolfe, 2004, p. 274)

The open character of this method makes it vulnerable to criticism regarding the reproducibility of findings. As such, owing to the openness of ‘how to deconstruct’, the here adapted methodology deserves a detailed account. In the spirit of deconstruction, the starting point for the present paper was not an already existing research problem. That is, the reading of text was not done in a quest to answer a pre-existing question, but to identify an element that offers room for interpretation and exploration. Whilst this part is probably implicit in any research as a form of engagement with the research area to identify an element that is worth exploring, the current research explicitly regards this first engagement with text as part of the method. This meant that the method here was not merely a tool to answer a given problem, but also to identify it.

Thus, by deconstructively reading Zuboff it was the aim to uncover the non-obvious. This meant that attention was given to clues about problems that are not explicitly discussed by her. By doing so, the tension between surveillance capitalism and privacy was identified, giving rise to the formulation of the research question. However, there needed to be an element of limitation regarding the notion of privacy. After engaging with writings about privacy, the concept was narrowed by specifying four different accounts of privacy that would be used and which are now represented in the research question. The aim here was to reflect the inherent diversity of privacy concepts while at the same time compressing it to a manageable level. Given the human rights

context of this research, the element of democracy was added to the research question to increase the relevance and focus of the findings.

In preparation for the analysis, several theoretical accounts have been presented earlier. These included capitalism, surveillance capitalism, privacy, autonomy, and democracy. Following this, the analysis consisting of two parts was done.

Part I engaged with privacy theories and sought to illuminate their limits in relation to surveillance capitalism. Herby a more detailed account of each theory was presented first and analysed subsequently. The aim was to extract elements that are relevant to surveillance capitalism and could then be used to further develop explanations.

Part II continued to further deconstruct the analysis of part I. This meant that the findings of part I were analysed in relation to democracy. Following the nature of the deconstructive methodology, special importance was given to explore alternative interpretations of the text as well.

5 Analysis

5.1 Part I

The first part of analysis will consist of four sections that follow the same structure. Each begins with presenting a privacy concept. These short accounts are then followed by a presentation of the findings. These findings present the result of the deconstructive reading of the privacy theories with surveillance capitalism in mind.

5.1.1 Analysis of Westin's Theory of Privacy

Alan Westin, in 1967, introduced a privacy theory that focuses on how privacy functions as a protection mechanism of the self by limiting other's access to the self. For Westin "[p]rivacy 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." (Margulis, 2011, p. 10) Westin further defines privacy as a person's temporary and voluntary withdrawal from society physically or psychologically (Fuchs, 2011, p. 223; Margulis, 2011, p. 10). He establishes four states of privacy: (1) solitude (freedom from observation); (2) intimacy (allowing relationships in small groups); (3) anonymity (freedom from identification and surveillance in public); (4) reserve (desire to limit disclosure and other's recognition of that). Westin also names four functions of privacy: (1) personal autonomy ("the desire to avoid being manipulated, dominated, or exposed by others" (Margulis, 2011, p. 10)); (2) emotional release (the release of tensions arising in social settings), (3) self-evaluation (the processing and planning), and (4) limited and protected communication (setting of boundaries and allowing protected sharing) (Margulis, 2011, p. 10).

This theory is intentionally limited to Western democracies, because Westin is aware of the social and political importance that underlie any definition of privacy (Margulis, 2011, p. 10).

Laas-Mikko and Sutrop (2012, p. 371) have used a normative account of privacy that can be seen as influenced by Westin and includes a "person's right to decide who and to what extent other persons can access and use information concerning him or her, have access to his or her physical body; access and use physical/intimate space surrounding the person".

At the centre of Westin's theory is the idea that people limit access to themselves. This limiting action includes determining the when, how, and extent to which certain information is communicated to others. The question arises how this can be guaranteed in a world that constitutes

a ubiquitous architecture of sensors as the case with the means of extraction. As such it is almost impossible not to be subjected to the collection and generation of information about oneself in a world with surveillance capitalism. This constitutes the first problem with this theory's approach to how privacy is provided. Effectively, the only way to stay in control of the information one generates, is to hide from technology. This seems both impractical and undesirable. Secondly, the theory is concerned with information that is communicated to others. However, the computing architecture of surveillance capitalism is to the largest extent automated with most of the information never being intended to inform others. Instead the information feeds into the architecture of the 'big other'. While Westin with his functions, among which personal autonomy seems the most relevant here, certainly gets to the core of why privacy is important, the "voluntary and temporary withdrawal of a person from the general society through physical or psychological means" (Margulis, 2011, p. 10) is not an option anymore. Therefore, Westin's theory provides little means to describe a limitation that is feasible for today's means of data extraction and behavioural modification. Concluding this section, a lack of limiting one's subjection to data collection constitutes one problem, the loss of autonomy with privacy another.

5.1.2 Analysis of Altman's Theory

Altman regards individual and group privacy as well as behaviour as a coherent system. For him, privacy regulation is dialectic and dynamic. It determines the extent to which interaction with others happens depending on the situation (Fuchs, 2011, p. 223; Margulis, 2011, pp. 11-12). For Altman, a social and environmental psychologist, the environment provides mechanisms to regulate privacy in our social interactions. Margulis (2011, p. 11) quotes Altman who described privacy as "the selective control of access to the self". Altman attributed five properties to privacy: (1) "privacy involves a dynamic process of interpersonal boundary control"; (2) there is a difference between "desired and actual levels of control"; (3) "privacy is a non-monotonic function" which means its levels can be optimal, too much, or too little; (4) "privacy is bi-directional" consisting of inputs from and outputs to others; (5) "privacy operates at the individual and group level" (Margulis, 2011, p. 11). While establishing a hierarchy of privacy functions, Altman posits creation of self-identity as the most central function.

When considering Altman's theory in relation to surveillance capitalism, it seems promising to look on his idea of privacy as non-monotonic function. This means that in a state of constant surveillance a constant level of too little privacy is given. (Unless privacy is not desired, in which case this is neither a problem nor a reason to discuss a lack of privacy.) By looking on the central

importance Altman's theory places on privacy as a social process, the psychological aspects, and cultural differences, it provides a hint towards where an answer can be found to the question why privacy does not work as intended. If the social, psychological, or cultural influences are important parts of privacy, meaning that in any of them little value is attributed to privacy, this could explain and provide further insight why privacy is not effective against surveillance capitalism. In conclusion of this section, the theory suggests that an answer can be found in social, psychological, or cultural influences.

5.1.3 Analysis of Petronio's Communication Privacy Management (CPM) Theory

Petronio's theory is said to be most valuable for computer mediated communication between persons. By drawing on the dialectical feature of Altman's theory, the opening and closing of the personal boundary is central. Open boundary means permitting access to or disclosing private information. Closed boundary means private information is not accessible. These two settings are called process of revealing and process of concealing and protecting. A necessity to be open and social but at the same time to be private and to preserve autonomy leads to a continuous adaptation of the privacy levels between the two states. The whole process, which describes how decision-making happens, is based on privacy rules, which are realised through a privacy management system that allows to regulate and manage the boundaries considering various factors, such as how much information is shared with whom. Part of Petronio's theory are five propositions: (1) people conceive private information in terms of ownership; (2) ownership of private information establishes a right to control its distribution; (3) privacy rules are highly individual and based on external and internal influences (e.g. culture, gender, needs, impact, risk, benefit); (4) sharing of private information forms a collective boundary and leads to co-ownership of privacy information where co-owners have the responsibility to control and manage the information according to the original owner's principles; and (5) a failure to coordinate the boundaries of original owners leads to 'boundary turbulences' and information flow to third parties (Margulis, 2011, pp. 12-13).

Because Petronio regards private information in terms of ownership, this opens an interesting way to connect it to surveillance capitalism. For in surveillance capitalism private information resembles data, the process of data extraction is relevant. As Zuboff explains, many of the data is generated by the users without them being aware of this. The notion of 'data exhaust', or data as 'raw material' that is claimed through the extraction by surveillance capitalists indicates that they claim ownership.

In light of this, it is questionable how users can prevent the extraction, even claim the ownership of data that is not visible to them. Since for Petronio ownership is essential to claim

information and its distribution as private, his theory provides little protection for many of the data that is either considered 'waste' or data of which the existence is not known.

However, Petronio's theory provides an account for the failure of privacy protection under surveillance capitalism. If the information (the personal data) were to be considered private by the user, the disregard for this fact by surveillance capitalist mechanisms can in Petronio's theory be labelled as 'boundary turbulence'. As such the theory provides an answer to the question why the handling of data under surveillance capitalism is problematic. However, the hidden nature and disregard for user choices by surveillance capitalism make the CPM theory look incomplete and lacking the power to explain how privacy can be protected from it. Similar to Altman's account, CPM stresses the individualistic element of privacy and here as well can be found a reason for its failure. In addition, the hidden operation of surveillance capitalism makes it hard to manage one's privacy.

5.1.4 Analysis of the Restricted Access and the Restricted Access/Limited Control (RALC) Theory by Moor and Tavani

Moor began by defining 'having privacy' as a situation in which an individual or group or information related to them is "protected from intrusion, observation, and surveillance by others" (Moor, 1990, p. 76). He particularly stresses the importance of *situation* in his early definition. To use situations, he says, allows to cover all sorts of affairs privacy is normally attributed to. A situation may represent an "activity in a location such as living in one's home", a "relationship such as a lawyer/client relationship", or "the storage and use of information related to people such as information contained in a computer database" (Moor, 1990, pp. 76-77).

Moor further distinguishes between *naturally* private situations and *normatively* private situations.

This account of Moor could be categorized as a *restricted access* theory, as he regards the control over the information as not essential for privacy. This however changes in a later account of Moor (1997, p. 31) where he proposes the "control/restricted access" theory. This theory is a response to criticism and set out to adapt to the at this time emerging difficulties related to information technology. More specifically, Moor acknowledges the need to also control certain information for privacy reasons. But he does so only to a limited extent since one actually does not have control over the largest part of information about one-self (Moor, 1997, p. 31).

Moor and Tavani expanded on Moor's work and formulated the Restricted Access/Limited Control (RALC) theory (Tavani & Moor, 2001). This privacy theory is based on a distinction between the concept, management, and justification of privacy. As such the concept contains a

distinction between the condition of privacy and the right to it, which allows for a separation of loss of privacy and violation of privacy (Tavani, 2007, pp. 9-10).

The theory, in continuation of Moor's previous account, also distinguishes between 'naturally' and 'normatively' private situations. The first describes physical boundaries which can exist without any legal or moral claim, the latter describes situations, often artificially creating privacy, in which "laws and norms [are] established to protect those situations" (Tavani, 2007, p. 10).

Central to the theory is that it regards the 'situation' as measure point for privacy. Individual privacy thus exists when protections from others in a situation exists, where they cannot intrude, interfere, and access information (Tavani, 2007, p. 10).

In respect to the notion of limited control three elements are part of controlling one's privacy: "choice, consent, and correction" (Tavani, 2007, p. 12). RALC is also intending to integrate previous theories, allowing for a broad account, and said to be most applicable to information sharing and control (Vasalou et al., 2015, p. 919).

As presented earlier, Moor's and Tavani's privacy distinguishes between naturally private situations and normatively private situations. In relation to surveillance capitalism it seems central to identify which of the two situations are concerned. As such, it seems as surveillance capitalism in the form of an artificial mechanism is a concern for what would be categorized as normative private situations which are drawn from "conventional, legal, or ethical" norms (Tavani, 2007, p. 10). Thus the effective protection of privacy depends on the existence of these norms.

5.2 Part II

The first part of the analysis identified different possibilities for the failure of privacy to contest surveillance capitalism. It is the intention here to further analyse these and introduce explanations. The findings of Part I can be summarised with (I) lacking means to control one's subjection to data extraction that lead to a loss of privacy and autonomy, (II) social, psychological or cultural influences determine the conception of privacy, (III) privacy management is individualistic and needs transparency of data-processing to function, and (IV) what constitutes a private situation is dependent on existing norms.

5.2.1 Relevance for Democracy

This analysis part seeks to answer how these findings can be interpreted in terms of relevance to democracy and human rights and it also seeks to further put the finding into theoretical context.

As the privacy theories inform us, there is often a link established for privacy as being necessary for personal autonomy. The presentation of democratic theories showed that there is also a link between autonomy and democracy. It showed that personal autonomy is a necessary condition for effective democratic participation.

A loss of personal autonomy, as it is the case when the means of behaviour modification are utilized to interfere at the deep level of decision making, has direct implications for democratic procedures. The finding (I) implies that with a loss of privacy, personal autonomy is lost too.

As was noted earlier, Zuboff talks about privacy rights in the sense of decision rights, that are redistributed. This suggests that she uses a conception of rights that is in line with the ‘will theory’ of rights. According to the ‘will theory’, rights enable choice and provide one with the option to do or not to do something (Wacks, 2006, p. 53).

Zuboff’s elaboration, however, suggests that she regards the power to execute a decision as equal to having the right to decide. However, it is not automatically given that the right is lost, let alone ‘redistributed’, when its enjoyment is lost. This means that if the power to make a choice is redistributed, the right is not automatically transferred as well. So, it is not actually the privacy that is redistributed (as Zuboff writes), it is the power that substantiates the right and makes possible to claim it.

While the right to privacy still exists for the users, the power to make the choice over privacy does not. This explains where the power of *instrumentarianism* comes from. It originates in the process of claiming the power of the users to decide.

If democratic participation means that the individual places power in the government, an involuntary deprivation of this power has severe implications for the legitimacy of democracy. In fact, it means that the holder of the power to make a choice are those who place the power in the government. If this power is not originating from the people, but from surveillance capitalist architecture, the foundation of democracy is lost.

An example where such attempts became reality on a small scale is the case of Cambridge Analytica. The consultancy firm used microtargeting in the political arena to influence elections (Zuboff, 2019a, chap. 9.2.).

5.2.2 Implications of Norms and Social, Cultural, and Psychological Influences for Privacy

This part will consider the findings that the conception of privacy depends on (II) social, cultural, or psychological influences, as well as existing (IV) norms and (III) lacking transparency.

While Fuchs framed privacy itself as an ideology, the suggestion here is to frame the act of ‘providing a service in return for personal data’ and its portrayal as a reciprocity as an ideological mean of surveillance capitalism. This means that the idea of getting something in return or a ‘free’ service when using digital services while at the same time giving up data is clouding the unbalanced relationship that is being established.

Ideologies are in Marxian theory “systems of belief which legitimate the class-based system of production by making it appear right and just, and/or obscure the reality of its consequences for those involved.” (Jones et al., 2011, p. 39)

As such values and beliefs are used to hold up a façade of fair exchange that leads to a (III) lack of transparency. This offers one way to understand the issue around privacy protection, which itself is founded in social, and cultural norms. If privacy fails to be effective against surveillance capitalism it is perhaps because the ideological belief of a ‘fair exchange’ obscures the view on the data exploitation.

Another way to see how norms influence the individual desire for privacy is the societal attitude towards body-centred data collection and knowledge creation that has manifested itself long before surveillance capitalism.

While the panopticon⁶ as an example of surveillance is part of Michel Foucault’s work, the present analysis tries to establish a link between Foucault’s idea of normalization and surveillance capitalism. In line of this, it seems interesting to look on big data analysis in terms of knowledge creation following Michel Foucault’s thought. Foucault extensively talked about *bio-politics* with which he means the regulation of bodies for health and safety or control of movement (Jones et al., 2011, p. 129). While his examples mainly involve governmental use of this regulation, Foucault also placed some attention on surveillance and the disciplining control of bodies in the capitalist production process (Foucault, 2003, p. 242). To ensure reliable production, bodies needed to be kept healthy and fit to maximise productivity. As forming a part of the production line, the bodies also needed to be organized in a rational manner (Jones et al., 2011, p. 136).

With surveillance capitalism the function and place of the body in the line of production has changed. As such the behaviour modification, the instrumentarian power, inherent in surveillance capitalism could be interpreted as a form of embodiment of data. That means the data, through the body, is brought to action to create revenue. The body, in the surveillance capitalist mode of production, becomes imbedded in the production process again. However, in contrast to industrial

⁶ While Zuboff has noted that she has in an earlier work connected the practice of surveillance with the idea of Bentham’s panopticon, she refrains from doing so now. Her argument is that the panopticon resembles a physical space which one can escape, in contrast to the ubiquitous surveillance of ‘big other’. (Zuboff, 2015, p. 82)

capitalism, the body is not producing, but instead degraded to the mere commodity and product of production. This is possible because it is no longer necessary to have disciplining control in the production process over those who produce (since this part is automated), but instead the disciplining control is now available and necessary to turn the commodity directly into a product. If the commodity itself can be manipulated to the point where it can be processed by automation this means a huge gain in surplus generation because close to no labour is needed to do this.

While Zuboff attempts to explain this creation of knowledge by using a Marxian idea of capitalism and labour exploitation, an interpretation with Foucauldian thought opens new ways to think about its success. It might explain why we are perceptive to the surveillance and do little about it. Especially when it comes to collecting e.g. fitness, diet, and health data that directly are connected to our body we seem to regard it as normal.

One way to explain this is by using Foucault's notion of 'normalization'. Foucault identified a conflict between 'disciplinary normalizations' and the 'juridical system of sovereignty'. The collected data and the knowledge and power that come with it are seen as neutral because of the scientific nature, when in fact it is not (Foucault, 2003, pp. 38-39).

With surveillance capitalism the disciplinary normalization is not only clashing with sovereignty in a legal sense, but considering the foundation of autonomy in individual sovereignty also on the individual level of the self. Present ideas of 'life-hacking' or 'biohacking'⁷ are just one example and proof of the continuous presence of the ideas and goals to reach increased efficiency and normalization. This has, in line with the surveillance capitalist economies of scope, expanded from data and concern over physical health to mental health as well. As Zuboff writes, the 'means of behavioural modification' do not aim to impose behavioural norms for the sake of conformity or obedience. Rather, the aim is to use the norms to accomplish commercial goals (Zuboff, 2019a, chap. 7.1.; 2019b, p. 18).

There is yet another example that shows that the function of privacy is not fully understood. What we value about privacy depends on how we understand it (Voice, 2016, p. 272).

Vasalou et al. (2015, p. 925) note that "even though technology users report high levels of concern about their privacy, they often do little to protect it." In their empirical research, they asked laypeople to provide definitions of privacy which they present in the form of features. The findings suggest that the features freedom and autonomy are given little attention in a definition of privacy by non-experts (Vasalou et al., 2015, p. 922).

⁷"Biohacking" commonly refers to the idea of manipulating one's own body to increase e.g. happiness, health, and performance (Munoz, 2018).

However, it is exactly that which is at stake when giving up privacy and being subjected to the means of behaviour modification.

Thus, if it is unclear what privacy is (especially its function), it is easily traded off because users have a conception of privacy that does not reflect a relevant purpose. So, it might be that unclarity and unawareness of the purpose of privacy, in particular one that includes an effective contest to surveillance capitalism, is one reason for its failure.

Together with the ideology of a fair exchange and the relaxed attitude towards data collection of the body the necessary function of privacy to protect personal autonomy is diminished.

5.2.3 Privacy or Liberty?

If privacy is not effective, what alternative is there? This section suggests that the threat posed by surveillance capitalism should be understood as a threat to liberty rather than privacy. For this purpose, it is proposed here that there is an element of the ancient mode of production reoccurring in the logic of surveillance capitalism.

The means of behavioural manipulation dictate our thoughts and actions, and thus have the power to limit our own ability to decide independently. While this might sound like an exaggeration at the moment, the current development suggests an increase of the influence of surveillance capitalism. Thus, if the freedom to decide and follow one's own actions is lost a state similar to slavery is entered. The difference, however, is that we would not be slaves that perform labour. In a system like surveillance capitalism we would become merely puppets that dance for the sake of dancing. We will be limited by the chains of data, that extract and infuse at the same time. Surveillance capitalism understood in such terms, makes obvious what is at stake. It is not primarily a matter of privacy, even though it is framed like one. What is at stake are the fundamental human rights of liberty and dignity.

When discussing autonomy, Kant described the drive by appetite as slavery (Christman, 2013, p. 697). While this is certainly a low threshold to mark the beginning of slavery, the line is more likely crossed when one's actions are not guided by own interests and one is exploited at the same time.

As was noted in the previous discussions of privacy, there is a tendency to confuse privacy with liberty. The view here suggests, however, that it is the opposite. What is framed as a problem of privacy, is in fact a problem of liberty and should be treated as such. This would perhaps overcome some of the issues associated with privacy that have been discussed above.

5.3 Future Work

As the discussion has shown, the problem is not privacy per se, but what privacy seeks to protect. The term privacy is used lightly in current debates about digital information collection and distribution. Thus, it seems necessary to engage in a discussion that takes the current risks more seriously. Further inquiry into the distinction of liberty and privacy in light of surveillance capitalism is one important step that has to be taken.

There is, however, the question what makes certain information private and worth protecting? Technological progress is currently dependent on data collection. To provide for this, an effective way to protect the data needs to be established. For example, a definition of privacy could take into account the effect of data exchange. As such privacy and autonomy are provided, if there is no backlash on any information collected. That means that data can be collected depending on its use. Given the collection of data in any case it seems promising to think of a theory that takes the handling of the data into consideration and works without any form of limiting or control by users.

Why do privacy regulations fail in practice? While the present work aimed to find an explanation for the lacking power of privacy to contest the threat of surveillance capitalism, the task was done in an entirely theoretical manner, whilst attempting to cover theoretical width, not depth. This means on one hand that the findings should not be taken as absolute, but rather as an indication for further inquiry in more theoretical detail, and on the other that a closer look on the practical difficulties of privacy regulations may reveal other valuable information as to where more problems lie.

The second part of analysis didn't provide an explanation to the ineffective means identified in (I). There are of course existing measures to protect privacy such as privacy policies. In many cases it is, however, not feasible for users to review them (Zuboff, 2019b, p. 22). But what happens if one chooses not to agree to them? A lack of alternatives makes this choice a hard one that will become even harder in the future. The development of effective mechanisms that guarantee the real availability of a choice is thus a challenge for practitioners in the field.

6 Conclusion

In conclusion, let us frame the problem of surveillance capitalism in a slightly different way by looking on yet another quote.

”But it could be that we, who are earth-bound creatures and have begun to act as though we were dwellers of the universe, will forever be unable to understand, that is, to think and speak about the things which nevertheless we are able to do. In this case, it would be as though our brain, which constitutes the physical, material condition of our thoughts, were unable to follow what we do, so that from now on we would indeed need artificial machines to do our thinking and speaking. If it should turn out to be true that knowledge (in the modern sense of know-how) and thought have parted company for good, then we would indeed become the helpless slaves, not so much of our machines as of our know-how, thoughtless creatures at the mercy of every gadget which is technically possible, no matter how murderous it is.”

(Arendt, 1998, p. 2)

Is it possible that Hannah Arendt could imagine the situation we are facing today when she wrote these opening lines for *The Human Condition* more than 70 years ago? The precision with which she frames the problem suggests exactly that, although the context is different. Since then humankind has made it to the moon, but does that mean the rest of Arendt’s scenario will too become true?

Surveillance capitalism makes us do things without the necessity of an initiating thought and motivation of our own. If our brain once was the origin of autonomy, the source of self-government, with surveillance capitalism it becomes dangerously close to being instrumentalized by the artificial machine intelligence that seeks to shapes our actions. The creation of knowledge and the power that comes with it are neither a product nor subject to our thinking. As such we lose autonomy, are not masters of ourselves anymore, and, eventually, are nothing but slaves in the chains of algorithms we created.

Surveillance capitalism presented and looked on in this way indisputably permeates human actions to an extending degree and challenges the foundation of democratic societies. In line with Zuboff’s suggestion, this paper has tried to find an explanation as to why privacy is not an adequate response to surveillance capitalism. The aim was not to present a solution, but rather to identify some of the not so apparent problems that surround the current attempts to challenge the claims of surveillance capitalism on human autonomy and its implications for democracy. To accomplish this, the paper offered an account of theoretical conceptions of capitalism, surveillance capitalism, privacy,

autonomy, and democracy. Applying a deconstructive method allowed to explore the topic without much constraint and therefore offering the possibility to discover the non-obvious.

As such it was found that privacy as a means to limit surveillance capitalism is bound to its own limits. A deconstructive reading of privacy theories in light of surveillance capitalism, identified that there are (I) lacking means to control one's subjection to data extraction that lead to a loss of privacy and autonomy, (II) social, psychological or cultural influences determine the conception of privacy, (III) privacy management is individualistic and needs transparency of data-processing to function, and (IV) what constitutes a private situation is dependent on existing norms.

The second part of the analysis established that the foundation of democracy is at risk when privacy, and as such personal autonomy, is threatened. It was also described that the 'getting a service in return for data' can be seen as a form of Marxian ideology that leads to a lack of transparency. Further, Michel Foucault's ideas of knowledge as power and bio-politics were utilised to explain the existence of a norm to accept data collection. By drawing on an empirical study, it was shown that the privacy functions to protect autonomy and liberty are not commonly attributed to it.

In a last step, it was then proposed to frame the problem differently. If the current conception of privacy is not working, perhaps the problem should be framed as one of liberty. Instead of asking to give consent to privacy policies, the request to give up autonomy and liberty by surveillance capitalists would be more revealing.

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