

**Ivana Stepanović**  
Forum for Ethnic Relations

**Privacy redefined: Towards the concept of  
democratic control**

**Abstract**

Right to privacy is a controversial issue mainly because there seems to be no consent on what does the concept refer to. Crucial problem regarding the right to privacy is our understanding of *private* as opposed to *public*. There are contrasting views on how should it be protected, and there is even a dilemma whether it should be entirely subordinated to control, and sacrificed for other benefits, such as security, or even socialising. The objective of this paper is to redefine and reassess privacy in its relation to control.

The analysis of the notion of privacy starts with the investigation of various meanings of privacy which shows that it is a social construct and that the borders of private sphere are constantly being contested. Research continues with the analysis of the concept of control in relation to the notions of power and surveillance. Inquiry of the two concepts is followed by an attempt to build the concept of democratic control. It is shown that in order to comply with democratic principles, there must be mutual limitation between privacy and control. In this way negative consequences of excessive freedom or potentially oppressive controlling powers can be avoided or minimised.

The purpose of this paper is firstly to draw attention to the problem of privacy protection and show importance of redefining and reassessing the notion alone, since many problems related to the protection of privacy stems from misunderstandings regarding its meaning. Secondly, the aim is to show that concepts of privacy and control should not be seen as opposed but rather merged together and standing in a complex relation to each other. Accepting and understanding the nature of this relationship should be the starting point for resolving existing problems related to privacy protection.

**Keywords:** Privacy, control, power, surveillance, democracy, democratic control

## Introduction

Privacy is a controversial issue nowadays not only because of the daunting impact of technology, but also because the very concept of private is problematic in many ways. There is no single definition of privacy, but rather many of them.<sup>1</sup> Perception of the difference between private and public space varies in different times and cultures, as well as in urban and rural areas. Privacy is therefore a social construct and has a range of meanings depending on particular circumstances. This is why the question is often not simply: what *is* privacy, but what it *should be*. It is a concept that is continuously transforming. Even though there is no commonly accepted explanation of what exactly the notion refers to, there seems to be a consensus on the need for privacy. Ambiguities related to the meaning and essence of the concept itself must be dealt

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<sup>1</sup> As Colin Bennet stresses out in his book *The Privacy Advocates*, existing definitions of privacy can perhaps even be categorised into several groups such as spatial and behavioural ones. Bennet, Colin J. *The Privacy Advocates: Resisting the Spread of Surveillance*. (Cambridge, Massachusetts: The MIT Press, 2008.) pp. 3-7

with in order to resolve current controversies related to the right to privacy.

There are various definitions of privacy that exist in today's Western world, but the prevailing one among them was formulated by John Locke. He claims that private space, as opposed to the public realm, is free from governmental interference and refers to home and family.<sup>2</sup> In this sense privacy is constitutive for freedom and dignity of a modern citizen, since it protects his or her individuality. However, in today's world there is a general openness towards new surveillance technologies that enable more safety and security. Therefore it would be wrong to deal with contemporary problems regarding the right to privacy from a classical liberal perspective. Confidentiality of the private realm, however it is understood, seems to be less valued nowadays. Therefore, classical understanding of privacy according to the libertarian paradigm today seems somewhat insufficient.

Yet another prevailing opinion on privacy should be questioned: the one which claims that it is overvalued and should therefore be completely subordinated to control. Radical break-up with the libertarian system of values is just another way of endangering fairness and justice in the society. If surveillance is not limited by the right to privacy, there is a danger of controlling powers becoming oppressive.

Since ancient Greece until today, respect for private life and transparency of political life are considered to be important democratic values. In contrast to this, authoritarian regimes keep governmental matters secret, while exercising total control over citizens. To limit governmental control over private lives of citizens is a very important condition for consolidated democracy. However, this does not mean that democracy demands total absence of control.

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<sup>2</sup> Locke, John. Two Treatises of Government, in *The works of John Locke. In Ten Volumes*. Vol. V. (London: 1823).

In order to create a strategy in defending the right to privacy, it should not be understood in opposition to the notion of control. The question is rather, what kind of control can be considered to be compatible with respect for privacy and therefore desirable in a fair and just society? Or, in other words: how can we make control democratic?

If we have in mind the way Nazi Germany controlled sex life of its citizens, it may seem outrageous to justify any kind of interference with matters that are meant to stay in the privacy of home. On the other hand, keeping private areas hermetically sealed means opening a space for other kinds of immoral and criminal deeds such as domestic violence. It is safety and security that are limiting the right to privacy, but it is also the other way round. Privacy and control constitute the borders of one another. It is vital to acknowledge the necessity of both privacy and control and prevent the dominance of either of the two values. Moreover, it is also important to decide upon the kind of control which can be exercised in a democratic society, as well as the desirable level of privacy. Finally, the question of choice between privacy and security is false. The optimal solution seems to be finding the right balance between them.

#### 1. Redefining Privacy: Debunking Myths of the Private/Public Divide

In order to resolve current controversies related to the right to privacy the concept of private needs to be revised. It seems to be dysfunctional since it encompasses diverse meanings: on the one hand it refers to privacy of home, family, correspondence and personal data, and privacy in a sense of intimacy, secrecy or solitude on the other. There is no single commonly accepted definition of privacy, but rather variety of them, each operating in a different framework. Even though there seems to be consent that all people are entitled to privacy, there clearly is no common agreement on what constitutes it. This is because privacy is a social construct and can therefore be defined only within a

particular context. Its meaning depends on historical period, cultural background and other factors.

It seems that old libertarian definition of private space as strongly opposed to the public realm is not sufficient. Those two categories can no longer be isolated as two separate compartments. This dualism can no longer be “conceived as a simple opposition or dichotomy, but should rather be viewed as multifaceted and protean, comprising a family of distinctions that are constantly shifting under the twin pressures of social change and political contestation”.<sup>3</sup> The boundary between the two categories is not fixed but rather flexible. This fluctuating nature of the border itself as well as the concepts of private and public should be the starting point in resolving perplexities revolving related to the right to privacy.

Furthermore, we should also put in question our traditional libertarian trust in privacy. Considering that limiting privacy sometimes leads to achieving far more benefit for both society and an individual, should we perhaps reevaluate it? Since its meaning depends on a particular milieu, privacy is not inherent and trans-historical and should therefore not be overestimated. By radically detaching private realm from the public and social sphere, submerging it entirely under the power of the sovereign citizen, liberal theory perhaps gave away too much authority to an individual who is then free to abuse it. Therefore, we should consider not only redefining privacy, but also reassessing it.

It seems that in order to obtain more security, it is necessary to lower our expectations for privacy and compromise it with control. Control that enhances safety and security enables better quality of life. However, we should also be aware of the dangers related to giving too much importance to security and completely sacrifice privacy. Privacy functions as the limiting factor of the power that is controlling. The

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<sup>3</sup> Passerin d’Entreves, Maurizio and Ursula Vogel, “Public and Private: a complex relation” in: *Public and Private: Legal, Political and philosophical perspectives*. (London: Routledge, 2000.) p 1.

controlling power is fair and democratic only if it is conditioned with respect for privacy.

### *1.1 Privacy as a Social Construct*

The problem of protecting privacy has aroused in modernity and was understood in strictly spatial sense. A need for secluded private area where one can exercise their freedom was manifested through compartmentalisation of the living space. In this sense, privacy was divided into small spatial units such as bedroom, study or a bathroom. In fact, historically, it was not until the invention of bedroom in the eighteenth century that privacy became an issue of concern.<sup>4</sup>

Idiom “an Englishman’s home is his castle” refers to this spatial understanding of privacy and essentially means that the government should not be interfering with one’s private territory.<sup>5</sup> In this sense privacy is deeply connected to the libertarian vision of freedom and a need for respect for private property where this freedom can be fully exercised. Samuel Warren and Louis Brandeis formulated privacy as “the right to be left alone”.<sup>6</sup> This definition should also be understood in a sense of the libertarian spatial view of privacy. If the right to life is considered to be a primary right, than privacy is a sort of an upgraded version of this right. It is the right to enjoy life.<sup>7</sup> As Colin Bennett argues, this definition is an essence of the classical American understanding of privacy which is still prevalent in the US.<sup>8</sup> The right to

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<sup>4</sup> Aries, Philippe. *Centuries of Childhood: A Social History of Family Life*. (New York: Alfred A. Knopf, 1962.) pp. 415f

<sup>5</sup> Bennett, Colin J. *The Privacy Advocates: Resisting The Spread of Surveillance*. (Cambridge, Massachusetts: The MIT Press, 2008.) p. 3

<sup>6</sup> Warren and Brandeis. “The Right to Privacy”. *Harvard Law Review*. IV December 15, 1890, No. 5

<sup>7</sup> Ibid

<sup>8</sup> Bennett, Colin J. *The Privacy Advocates: Resisting The Spread of Surveillance*. (Cambridge, Massachusetts: The MIT Press, 2008.) p. 3

be left alone is essentially a negative right and refers to all forms of the outside control exercised over an autonomous individual.

However, it is not just that their private space is considered to be impenetrable, but also the decisions they make about their lives should not be influenced by the state. Therefore, perception of private sphere as a physical space does not cover all its meanings. Private realm can also be defined in a non-spatial sense. In other words, to protect one's privacy is to behave in a certain way rather than to simply keep it enclosed within a specific territory. It means to treat one's personal matters with respect. On the other hand, private realm also refers to the sphere of information. This aspect of privacy is especially important in the contemporary world where privacy concerns are often related to virtual reality.

Even though in today's world people still care about privacy of their homes, they are also concerned with the privacy of data. We now have parallel virtual lives and occupy virtual places that we call our own. In our virtual lives protecting privacy means keeping personal data confidential. Control is no longer just intrusion into the sphere of home and family but also monitoring of personal data. Surveillance is no longer merely observing physical bodies but also virtual personalities consisted of information. Consequently, privacy is not just territorial and behavioural but also informational.

Furthermore, meaning and usage of the word privacy is not only dependant on the historical epoch, but also varies in different cultural frameworks. Expectance of privacy is higher in the western world than it is for example in certain Muslim countries where there are, for example, rules about drinking alcohol, dress code and marriage. In the societies where there is stronger control over private life, privacy is understood in a narrower sense. Moreover, need and demand for privacy is usually different in urban and rural areas, but can also vary depending on the size of the cities.

In conclusion, there is no single definition of privacy since it is clearly a notion with variable meaning. It is therefore essential to keep in mind this inconsistency of the concept itself when developing

strategies for the protection of the right to privacy. Furthermore, it is also obvious that the meaning of privacy depends on the meaning of control and vice versa. Those two notions are mutually constitutive, for what we perceive as private sphere depends on what constitutes control. Conversely, control is constituted with regards to what we consider as private.

### *1.2 Is Individuality Overrated?*

Today's understanding of privacy largely relies on John Locke's division between public and private. It was very important for him to make a clear demarcation line between the two spheres, since it was fundamental for his concept of natural rights, due to the fact that private realm is the one where a citizen is untouchable, left alone to "preserve himself, his liberty and property".<sup>9</sup> Locke defined private sphere as opposed to the political realm. Privacy zone is a safe area left with little or no governmental intervention. In this context privacy refers to the concept of freedom in a sense of non-interference or a negative liberty.<sup>10</sup> This lack of intrusion into one's private life is crucial for the liberal thought: privacy meant absence of control as well as freedom and human dignity. Private life was not merely freedom to enjoy sexual and family life, without being supervised and disturbed, but also to have, "a room of one's own",<sup>11</sup> or a space for contemplation, creativity and personal development. Privacy was highly appreciated because it was considered to be an important condition for the flourishing of an individual's intellectual being.

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<sup>9</sup> Locke, John. *Two Treatises on Government*, in "The works of John Locke". In Ten Volumes. Vol. V. (London: 1823.) Par. 131, p. 161.

<sup>10</sup> Here I refer to the classification of Isaiah Berlin from the "Five Essays on Liberty". Berlin, Isaiah. *Liberty*. Edited by Henry Hardy. (Oxford: Oxford University Press, 2002.) pp. 169 – 181

<sup>11</sup> Woolf, Virginia. *A Room of One's Own*. Ebooks, <http://ebooks.adelaide.edu.au/w/woolf/virginia/> (Accessed: 01.09.2011)



Lockean definition of privacy can, in this sense, be understood as spatial or territorial. It is located inside, rather than outside, residing within a private, rather than a common property. Private property and the right to be left alone are therefore prerequisites for human dignity and individual development. One's own space is therefore just as important as liberty. Moreover, it is the place where freedom occurs.

According to the liberal *laissez-faire* doctrine, this secluded private area should be free from any sort of exercise of power unless there is a good reason. Governmental control is not needed, except in order to prevent or resolve a conflict, or "harm to others", as J. S. Mill puts it.<sup>12</sup> It is generally considered to be a safe area. However, this radically liberal interpretation of privacy as a negative right is often criticised. Even though privacy is in a sense a basic contemporary liberal value<sup>13</sup>, it can be legitimately over-ridden in many situations, and should rather be understood as a positive right. Safety and security concerns are often colliding with that of privacy and are considered to be predominant for enabling bigger control over life.

In contrast to the libertarian paradigm, it can be argued that every private space, whether physical or virtual, is actually a crack in the governmental system, a threat for safety and security. If, for example, there is no legislation that forbids parents to torture their children, and no established procedures that can prevent the violence, privacy is a threat to society, rather than its asset. It can be argued that libertarian strict division between private and public is legitimising domestic violence in a certain sense. Therefore an effort to preserve privacy can easily be transformed into a battle against security. This is one of the reasons why Locke's distinction between public as a sphere of politics, and private as a family domain was widely criticised: if

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<sup>12</sup> Mill, J. S. *On Liberty*. Edited by: David Bromwich and George Kateb. (New Haven and London: Yale University Press, 2003.) p. 80

<sup>13</sup> McCloskey, H. J. "The Political Ideal of Privacy". *The Philosophical Quarterly*, Vol. 21, No. 85. Blackwell Publishing, October 1971. Pp. 303-314

understood as a negative liberty, privacy is enabling clandestine activities.<sup>14</sup>

Liberal conception of freedom is glorifying individuality and perhaps even egoism. An example of “romantic individualism” of early liberal thinkers is Mill’s definition of privacy as the right to be left alone.<sup>15</sup> He claims that: “Over himself, over his own body and mind, the individual is sovereign.”<sup>16</sup> But it is precisely this sovereignty and almost absolute power over rigidly delineated sphere of private life which western aristocracy cherished that is dangerous. It can easily lead to transgression.

Nevertheless, the distinction between public as the political realm and private as the family sphere was first established with the emergence of Greek polis. But, as Aristotle claims in his *Politics*, the perception of the two spaces was quite different in ancient Greece: “Thus also the city-state is prior in nature to the state household and to each of us individually. For the whole must necessarily be prior to the part.”<sup>17</sup> Unlike libertarian thought, Greek philosophy gave primacy to the political realm, subordinating an individual being to the social life. Favouring public rather than private is exactly the opposite philosophical stand than that of liberalism: there was no space for self-centred individualism in the Greek polis.

However, if we abandon the classical libertarian division between private and public because it considers privacy as a negative right and therefore overestimates it, we are risking a danger of ending up in yet another kind of a trap. Namely, it would be wrong to completely dispose of the libertarian way of thinking and entirely

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<sup>14</sup> Mindle, Grant, B. “Liberalism, Privacy, Autonomy”. *The Journal of Politics*, Vol. 51, No. 3 (Aug., 1989), pp. 575-598

<sup>15</sup> Ibid.

<sup>16</sup> Mill, J. S. *On Liberty*. Edited by: David Bromwich and George Kateb. (New Haven and London: Yale University Press, 2003.) p. 81.

<sup>17</sup> Aristotle. *Politics*. Translated by H. Racham. (London: William Heinemann LTD, 1959.) p. 11

replace privacy concerns with that for the security. There is a global tendency to do so which is influenced primarily with the fear of terrorism. But if we completely remove the border between private and public sphere, allowing uncompromised control in order to preserve peace and security, we are faced with other threats to justice and democracy.

While libertarian border kept the private sphere comfortably safe from the governmental control, it dangerously exposed it to other kinds of despotic power such as the patriarchal rule. However, opening up private space to limitless control which preserves safety and security does not necessarily mean a condition for a just society. Prioritising security over privacy is another extreme which is undermining democracy. If they are not restricted, controlling powers can turn into despotic powers. This is why radical criticism of liberal definition of private versus public is not sufficient either.

Today's world is thorn between orthodox libertarian vision of privacy and a completely opposite standpoint according to which control is overpowering it. Permanent conflict between privacy and security issues only proves that this is a big unsolved problem. Privacy must be redefined and analysed not in the opposition to public, but rather in relation to control. Consequently, possible strategies for its defence must be sought for from a new standpoint.

We should accept that limitation of privacy enables security, for which we may even say that it has a greater benefit in many cases. Consequently, we should no longer consider privacy solely in a sense of non interference, or as a negative right. We should rather see it as a positive right. Instead of standing on the opposite side of control, it is in an interaction with it. But we must not allow it to submerge in controlling powers. The question is not whether we should defend privacy at all, or perhaps choose to deprive ourselves from it in order to gain other benefits. The question is rather what strategy to opt for in order to defend privacy, which we must understand as contextual and deeply intertwined with control.

Privacy and control should therefore be understood as a restriction to each other. While privacy is disabling autocratic control, surveillance is preventing negative consequences of privacy. In this sense neither privacy should be pure lack of interference, neither control should be pure demonstration of power in a sense of dominance and manipulation. This double limitation has an aspiration to enable individual to have more control or power over life. At this point terms power and control have the same meaning: self-mastery, or ability for individual achievement. Consequently, neither power nor control should be understood just in terms of a relation between the dominating and the dominated force.

## 2. The Government is in your Bedroom: Revealing the Mechanisms of Control

In reply to libertarian demands for total absence of control over private sphere, it may be argued that control is not just inevitable, which is a historical fact, but also even desirable. However, it must be carefully distinguished which types of control are advantageous, and under what conditions they can be considered as beneficial. For certain kinds of control are certainly undesirable.

When analysing the notion of control, its relations to certain other concepts must also be taken into account. The notion of control is closely connected to the concepts of power and surveillance and must therefore be examined in relation to them. Namely, in order to investigate the full meaning of control, it is vital to understand to what extent the scope of the notion overlaps with that of surveillance and power. For example, control can mean both autocratic dominance in a sense of Machiavelli's understanding of power,<sup>18</sup> and foucaultian

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<sup>18</sup> Machiavelli, Nicolo. *The Prince*. Translated by W. K. Marriott. The Constitution Society: <http://constitution.org> (Accessed: 10/10/2011)

disciplinary power.<sup>19</sup> On the other hand, it can be understood in a sense of harmless surveillance that amounts to monitoring without imposing certain pattern of behaviour for any kind of moral or ideological reasons.

In relation to the contemporary fears of complete loss of privacy in the information era, we must be aware of the fact that control over private sphere is not new. Authoritarian governmental control has been invading privacy for centuries. Even the sex life as the most intimate part of privacy was under severe governmental supervision at all times, for example in the Nazi Germany or Ceausescu's Romania for the purpose of pursuing nationalistic demographic plans. On the other hand, Christianity imposed prohibitions regarding sexuality for the dogmatic reasons<sup>20</sup>. This proves that freedom and sovereignty of an individual is being constantly undermined by different totalitarian and oppressive regimes.

Those are perhaps the most striking examples of an authoritarian control. However, surveillance as a means of control is not necessarily totalitarian. It has a double function: security and pure control which can be deviated into manipulation. As David Lyon argues, surveillance has two faces, or two meanings: "I may ask you to 'watch over' my child to ensure that she does not stray into the street and risk being hit by a car (...) or may I ask you to watch over the same child to ensure that she does not get up to mischief."<sup>21</sup> While the first meaning refers to security issues, the second one is related to a moral concern and implies possible constraints in the form of proscription or punishment. It is the later that may transgress into autocratic control.

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<sup>19</sup> Foucault, Michel. *Discipline and Punishment: The Birth of the Prison*. Translated by: Alan Sheridan. (New York: Vintage Books, 1977.)

<sup>20</sup> Foucault, Michel. *History of Sexuality. Volume I: An Introduction*. (New York: Random House, 1978.)

<sup>21</sup> Lyon, David. *Surveillance Society: Monitoring Everyday Life*. (Philadelphia: Open University Press, 2002.) p. 3

Surveillance and control are undoubtedly necessary violations of privacy. However, it is important to define their limits. For example, controlling sexuality in a sense of medical care is commonly accepted as desirable, while fascist eugenics is considered to be despotic and immoral.

Sexuality has been highly controlled throughout history. Sigmund Freud was the first theoretician to analyse the field of sub-consciousness and show how profoundly influential sexual desire is for a human being. Most importantly, he argued that sexual repression was the blockage which caused many problems in the western society.<sup>22</sup> Sexually repressed, masses can easily be manipulated with. Different ideologies from Christianity to liberalism used control over sexual and private life in order to plant themselves into the society.

According to Wilhelm Reich, sexual repression can turn masses to authoritarianism. He claims that people's sex life plays an important role "in the total social process in a subterranean way. Hitler knew how to utilize this helplessness born of sexual misery".<sup>23</sup> Speaking of the population policy of the Third Reich, Herbert Marcuse claims that the "personal satisfaction has become a controlled political function"<sup>24</sup>. This means that privacy has been abolished and leisure time had been put under supervision. The individual has become socialised, and within the social realm, an individual recognised his/her private satisfaction as a patriotic service to regime, and received his reward for performing it.<sup>25</sup> In this sense, ideology is offering a fake satisfaction. People are manipulated into serving the oppressive regime. Their pleasure is replaced by fulfilling the higher purpose. It follows

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<sup>22</sup> Freud, Sigmund. *Civilisation and its Discontents*. Translated and edited by: James Strachey. (New York: W. W. Norton & Company. INC. 1930.)

<sup>23</sup> Reich, Wilhelm. *The Mass Psychology of Fascism*. Translated by: Theodore P. Wolfe. (New York: Orgone Institute Press, 1946.) p. 175.

<sup>24</sup> Marcuse, Herbert. *Technology, War and Fascism*, in *Collected Papers of Herbert Marcuse*, edited by Douglas Kellner. (London and New York: Routledge, 2004.) p. 163

<sup>25</sup> *Ibid.* p. 163.

that the society is superior to an individual who is no longer free and has no control over his/her sexuality.

Furthermore, it can be argued that the capitalism, if seen as an ideology, operates in an oppressive way too. It represses sexual desire by replacing it with the desire to accumulate and spend capital. It is even commonly accepted that bodily pleasure is exchanged for the self indulgence of shopping. This implies that pleasure is organised around labour. Labour produces capital and that is why it is vital that sexuality must be controlled and even replaced by products of labour. Leisure time, which essentially belongs to the private sphere, is sacrificed to the capital. This shows that the conflict is not between work and leisure, but rather between alienated labour and *eros*.<sup>26</sup> Therefore Marcuse suggests replacing alienated labour with non-alienated libidinal work.

Foucault approaches the problem of sexual repression from a different angle. Rather than analysing phenomenon of control, Foucault is turning the problem upside down and questioning “the repression hypothesis” itself.<sup>27</sup> In other words, instead of claiming that there is a conspiracy against sex, he is performing a philosophical inquiry in order to uncover causes of endless proliferation of discourses on sexuality in the western world.<sup>28</sup> He is examining reasons for their emergence and investigating how they managed to survive up until today.

According to his analysis, confinement of sexuality in Victorian times marked the beginning of the repression, which was not masterminded by the centres of power, but rather occurred within the language. The consequence of turning sexual pleasure into a forbidden topic was, paradoxically, obsession with sexuality. Far from being solely a private matter, it turned into a public fixation. It was supervised and controlled: by doctors, teachers and psychiatrists, but also by

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<sup>26</sup> Marcuse, Herbert. *Eros and Civilisation*. (Boston: Beacon Press, 1996.)

<sup>27</sup> Foucault, Michel. *History of Sexuality. Volume I: An Introduction*. (New York: Random House, 1978.)

<sup>28</sup> Ibid.

governments in order to actualise their demographic projects.<sup>29</sup> Sex has become something that was not so much practised, but rather treated as a subject of scientific analysis, surveillance and endless discussions: it has been transformed into a *discourse*. Hence, Foucault believed that repression is operating within language: “Under the authority of a language that had been carefully expurgated so that it was no longer directly named, sex was taken charge of, tracked down as it were, by a discourse that aimed to allow it no obscurity, no respite”.<sup>30</sup>

Rather than claiming that repression is imposed on people externally, Foucault argues that it is an internal relation. Instead of one despotic force, there are power relations which are interior and are operating in a decentralised and subterranean way. He claims that there is no “movement of power that was essentially repressive.”<sup>31</sup> Power is not a one-sided demonstration of the force, but in fact operates as a relationship between the opposing sides. Consequently, sex should not be understood simply as a subjected side, a natural drive that should be liberated through resistance.

One of the most important conclusions that can be drawn from Foucault’s analysis is that surveillance is not essentially connected to the repression. It is a means of control which does not necessarily need to be despotic. This is why notions of surveillance and control should be understood in relation to the notion of power.

### *2.1. The Power Game*

The notion of power is usually understood in a sense of dominance over others, as for example Machiavelli describes it in his *The Prince*.<sup>32</sup> According to this definition, power is something that is possessed by some authority, be it a monarch or the government. It is a

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid. p. 20.

<sup>31</sup> Ibid. p. 81

<sup>32</sup> Machiavelli, Nicolo. *The Prince*. Translated by W. K. Marriott. The Constitution Society: <http://constitution.org> (Accessed: 10/10/2011)



one-way relation of the dominant force over the dominated group of individuals. Consequently, defined in this way, power refers solely to social relations. This is essentially the way we describe sovereign, authoritarian power. In this sense we usually use the term in everyday life when we say “he has the power over me” or “conservatives remained in power”. However this is not the only meaning of the notion.

As Thomas Hobbes acknowledges in *Leviathan*, power can also be understood as the ability to achieve something: “The power of a man, to take it universally, is his present means to obtain some future apparent good, and is either original or instrumental.”<sup>33</sup> In this sense power is also a self-mastery, rather than just mastery over others. This proves that the notion should be understood in a broader way and does not necessarily refer to social relations.

Nietzsche recognises both abovementioned meanings of power. Apart from seeing it as a pure dominance of those who are powerful over those who are weak, he also describes it as “the power to shape things according to our wish. The joy in shaping and reshaping—a primeval joy! We can comprehend only a world that we ourselves have made.”<sup>34</sup> In this sense, power is also the power of creating. It is ability to achieve or create.

Furthermore, when speaking of power in a sense of dominance, according to Nietzsche there is always a relation between the forces that are struggling for power. He recognises both sides as active participants. This means that one will is trying to have command over another will which resists.<sup>35</sup>

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<sup>33</sup> Hobbes, Thomas. *Leviathan*. (London: 1651.) Chapter 10.

<sup>34</sup> Nietzsche, Friedrich. *The Will to Power*. Paragraph: 495. Internet Archive: <http://www.archive.org/details/TheWillToPower-Nietzsche> (Accessed: 12/10/2011)

<sup>35</sup> Deleuze, Gilles. *Nietzsche and Philosophy*. (London: Continuum, 2005.) p. 5

Accordingly, even if understood as control over others, power is not necessarily a one way relation of dominance. As Hegel explicated in the *Phenomenology of Spirit*, there is a dialectical process between the dominant and the dominated. In a relationship between a master and a slave, there can in fact never be full dominance of the former over later in a sense of total negation.<sup>36</sup> In other words, power is split between the two actors. Consequently, it is never just the master who is manipulating the slave; the slave is also manipulating the master.

Foucault further explicates the definition of power as a relation of forces. He sees power as operational, with both dominant and dominated forces involved. Foucault argues that since modernity it is no longer sovereign power that demands loyalty, but a disciplinary power that functions as surveillance and controls behaviour and everyday life.<sup>37</sup> In this way, power is understood as control and is dispersed and focused around centres that have disciplinary functions such as prisons and hospitals. But it is not only that the power relations do not end with the governmental control. They spread across the borders of those centres which are also regulated by the state and constitute a large network which includes the sphere of body, sexuality, technology and other phenomena. In other words, power relations are everywhere. It is not only the governmental power that is dangerous, but also other underlying manifestations of power.

The state, which can be seen as a meta-power is in a condition/conditioned relationship with the network of power relations.<sup>38</sup> It has a role to regulate other power relations and prevent

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<sup>36</sup> Hegel, G. W. F. *Phenomenology of Mind*. Marxists.org: <http://www.marxists.org/reference/archive/hegel/works/ph/phba.htm> (Accessed: 05/08/2011)

<sup>37</sup> Foucault, Michel. *Discipline and Punishment: The Birth of the Prison*. Translated by: Alan Sheridan. (New York: Vintage Books, 1977.) p. 23.

<sup>38</sup> Foucault, Michel. *Power/Knowledge: Selected Interviews and Other Writings 1972 – 1977*. Edited by: Colin Gordon. (New York: Pantheon Books, 1980.) p. 122.

them from being despotic. This is being done by the rule of law which is a set of prohibitions which prevent even the government itself to demonstrate an authoritarian rule. This is precisely how modern democracies operate. Within power relations there are in fact two active sides, rather than just the dominant and the dominated one.

Consequently, there are two ways to define power: as a relation of the dominant and the dominated side and as an ability to achieve something (in this sense, power and control are synonyms). The first definition refers to two different types of power. The first one is structural and centralised, and the other one post-structural and dispersed everywhere. Each type of power operates through a particular controlling strategy. While, for example, modernity was characterised by the disciplinary control focused on centres where it was exercised (such as family, prison or a hospital), in the post-modern era, control means surveillance in the sense of “monitoring”.<sup>39</sup> This type of surveillance is conceived according to the democratic principles and has an aim to prevent despotic power relations. However, democratic control, defined in this way, is a goal yet to be achieved.

### Conclusion

Instead of struggling to define it, we should acknowledge privacy as a social construct because its meaning depends on a particular context. Furthermore, we should let go of the classical libertarian definition according to which it is a negative right and the private sphere should be free from any governmental interference. However, it is equally wrong to marginalise privacy and surrender to the faceless power of control.

The solution lies somewhere in the middle, between radical individualism and capitulation to the total control. This means that

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<sup>39</sup> The term “monitoring” here refers to the meaning usually used in human rights terminology: surveillance as a preventive measure for preserving peace and security, without an aspiration to change behaviour.

privacy and control should no longer be seen as contradictory, but rather as complementary values. They should be limiting each other and therefore preventing negative consequences of excessive freedom or potentially oppressive controlling power. Balance should be sought for contextually, since it is impossible to find proportionality that would fit universally.

However, it is not just any kind of control that is compatible with privacy. Contemporary societies aspire to democratic control which should be understood in relation to the notion of power. Unlike sovereign control which is vertical and unilateral, it should be understood in terms of power defined as relation of forces. Control is therefore not simply imposed on those who are controlled since they are able to resist it, influence it and overpower it. Within power relations there should be two active sides, rather than one passive and dominated and the other one that is dominating. Democratic control has the aim to regulate all the existing power relationships. It has a role to pacify them in order to prevent any despotic power relation.

In this sense democratic control is preventive, and amounts to surveillance that is mere monitoring without aspirations to be manipulative in any way. But even this democratic control needs to be limited by the respect for privacy, since without this restriction it can easily become autocratic. On the other hand, privacy limited by control which preserves peace and security enables more control over life. In deciding upon the desirable balance between them, we should opt for the solutions which are beneficial for both society and an individual.

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**Ivana Stepanović**

**Novo određenje privatnosti: Prilog pojmu demokratske kontrole**

**Apstrakt**

Pravo na privatnost je kontroverzna tema pre svega zato što ne postoji saglasnost o tome na šta se koncept privatnosti tačno odnosi.

Suštinski problem vezan za pravo na privatnost je naše razumevanje privatnog nasuprot javnom. Različiti pogledi na to kako privatnost treba zaštititi su u sukobu, a postoji čak i dilema treba li privatnu sferu podvrgnuti kontroli i žrtvovati je za druge vrednosti kao što je bezbednost ili čak društveni život. Cilj ovog rada je redefinisavanje privatnosti i njenog odnosa prema kontroli.

Analiza pojma privatnosti počinje istraživanjem njegovih različitih konotacija iz čega sledi da je zapravo reč o konceptu koji nema fiksno značenje, te da se granice između privatnog i javnog neprekidno pomeraju u zavisnosti od konteksta. Istraživanje se nastavlja analizom pojma kontrole i to u njegovom odnosu prema pojmovima moći i nadziranja. Nakon ovih analiza sledi pokušaj da se izgradi koncept demokratske kontrole. U zaključku se pokazuje da dosledno poštovanje demokratskih principa nužno povlači odnos uzajamnog ograničenja između privatnosti i kontrole. Na ovaj način negativne posledice neograničene individualne slobode sa jedne strane i potencijalno represivne društvene kontrole sa druge strane bivaju izbegnute ili bar minimalizovane.

Svrha ovog rada je pre svega da skrene pažnju na problem zaštite privatnosti i pokaže značaj redefinisavanja samog pojma, jer mnogi problemi vezani za zaštitu privatnosti zapravo proizlaze iz nesporazuma u pogledu značenja koncepta privatnosti. Nadalje, cilj ovog rada je da pokaže kako privatnost i kontrola nisu međusobno suprotstavljeni pojmovi, već stoje u kompleknom odnosu međusobne zavisnosti. Pravilno razumevanje ovog odnosa bi trebalo da bude prvi korak koji vodi ka razrešenju postojećih problema vezanih za zaštitu privatnosti kao ljudskog prava.

**Ključne reči:** Privatnost, kontrola, moć, nadziranje, demokratija, demokratska kontrola