

**The Problem with Privacy:
From the Protestant Reformation to Surveillance Capitalism**

by John Yoon

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Paul Fleming, Chair
Amy Villarejo, Second Reader
Jason Frank, Third Reader
Marilyn Migiel, Advisor

Cornell University
Ithaca, New York

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Abstract

This essay questions the notion that surveillance violates the right to privacy. It takes as its point of departure the cultivation of private devotion in the Protestant Reformation, which it identifies as the common basis for both privacy and surveillance. Since the very beginning of its conception as something valuable, privacy, and the freedom that seems to come with it, has been sought after only within the context of the larger imperative of obedience, sustaining a Protestant concept of the knowable self that is subject to higher power. Through a critical genealogy of the self throughout modernity, I argue that the critique of surveillance cannot involve the recovery of privacy.

If privacy is a right that can be “violated” or “invaded” and for which one is entitled to have a “reasonable expectation,” it can scarcely be understood without grasping the intellectual history of the concept of the self in Western philosophy. As I take up the question of what our notion of privacy is predicated on, I am concerned with the modern notion of the subject. My project here is to track how the self has been conceptualized over time and how the concept of the self has been sustained in the concept of privacy. From the early Lockean accounts of private property, through the Kantian understanding of moral selfhood as transcending the status of being a thing alongside other things, to the liberal thought of Mill, in which man creatively constitutes his own individuality as a kind of second nature, the common element is a respect for the self engaged in the mundane yet noble tasks of ordinary life—an invention of the Protestant Reformation.

Identifying this religious context for the origin of the secular concept of privacy allows us to see that privacy is indebted to the theological questions of the Reformation concerning how one can be made right with God. This is not to say that the concept of privacy has not changed, but to identify the continuities throughout its evolution. The meaning of privacy has changed continually since the Industrial Revolution as technology’s encroachment on private information took new forms, with the development of new journalism and police tactics, market research, computer databases, and social media.¹ Legal scholars also have proposed frameworks meant to encompass the various and increasingly complex contexts of information transmission and privacy violations, which have shifted more quickly than the legal system could adapt.² But

¹ Igo, Sarah E. *The Known Citizen: A History of Privacy in Modern America*. Harvard University Press, 2018.

² Diffie, Whitfield, and Susan Landau. *Privacy on the Line: The Politics of Wiretapping and Encryption*. MIT Press, 2010. Nissenbaum, Helen. *Privacy in Context: Technology, Policy, and the Integrity of Social Life*. Stanford University Press, 2009. Solove, Daniel J. “A Taxonomy of Privacy.” *University of Pennsylvania Law Review* 154, no. 3 (January 1, 2006): 477. <https://doi.org/10.2307/40041279>.

when we are talking about privacy, we are actually faced with something older than the Industrial Revolution. My thesis is that the concept of privacy today is indebted to the practice of private devotion from the Protestant Reformation. I demonstrate this through a historical genealogy of privacy that starts at the Reformation, which asserted the autonomy of faith from the institutions of the Catholic church in the 16th century, moves through the 17th century's secular conceptions of the self, and arrives at the contemporary notion of privacy as the appropriate sharing of personal information, showing modernity's enduring investment in the autonomous self and the concept of freedom as the absence of external constraints. Returning to the theological roots of privacy does not necessarily deny the increased complexity of the meaning of privacy today or simply claim that the theological inheritance renders privacy illegitimate. Instead, examining what secular concept of privacy has inherited from its theological origin helps lay clear the perils of privacy, especially in its promise of shelter from surveillance. The Reformation, to which my study of the basis of the concept of privacy returns, is a paradigmatic moment in which privacy and surveillance can be studied in tandem, particularly in the relation between the self and the all-knowing God. The question driving this thesis therefore concerns what it means to invoke the autonomous self against invasive power and whether privacy provides the adequate criteria to critique our systems of domination.

What is important to note is that privacy has not always been considered endangered. Neither has it always been considered desirable. Rather, it is an irreducibly modern and Western concept that Reformation's religious convictions set in place. This religious, political, intellectual and cultural movement of the 16th century came to manufacture the structures and beliefs that would define modernity, including the notion of the self and the home, the family, work, and private property as the center of life. At its core, privacy is tied to the new notion of the self that

emerged in the Reformation. When the word “private” first came into English from the Latin *privatus*, withdrawn from public life, and *private*, to bereave or deprive, the English-speaking world prior to the Protestant Reformation did not view the idea of privacy as an advantage but as a deprivation.³ Then the Reformation gave privacy the positive connotation it has today when it cultivated the idea of faith as a private matter. The Protestant church emphasized one’s direct engagement with scripture, self-examination, and personal accountability for spirituality against the authority of the Catholic church in a way that increased the availability of solitude, anonymity, and an ordinary life and imbued them with the sense that they were valuable.⁴ Furthermore, after the Reformation, ordinary life outside of one’s actions as a citizen was on the contrary the very center of the good life.⁵ Prior to the Reformation, according to Aristotelian ethics, the notion of the good life had only guided one’s actions as a citizen of a polity. Part of the Protestant embrace of ordinary life was the acceptance of the ordinary lay condition, which broke with the monastic ideal of perfection and sacredness.⁶ The Reformation manufactured an understanding of life away from public view as the center of one’s commitment to God, having a pivotal impact on what privacy meant from then on.

After the Reformation’s impact on the word “privacy,” further developments to the idea of privacy as a positive good transformed the relationship between society and the individual and the very organization of public and domestic spaces throughout modernity. In the 17th and 18th centuries, the meaning of privacy developed beyond the sense of solitude to the sense of dignified withdrawal and the privacy of family and friends. This development was deeply

³ MacCabe, Colin, and Holly Yanacek. “Privacy.” In *Keywords for Today: A 21st Century Vocabulary*. Oxford University Press, 2018.

⁴ Taylor, Charles. 1992. *Sources of the Self: The Making of the Modern Identity*. Cambridge University Press, 215.

⁵ Ibid., 13.

⁶ Ibid., 242.

connected with the corresponding changes in the senses of “individual” and “family” following the Reformation. The idealization of marriage based on affection and devoted concern for children in the late 17th century can be understood as an aspect of the new significance of ordinary life since the Reformation.⁷ When the new value of family and intimate relations between spouses gained ground, people demanded and won privacy for the family. The increasing seclusion and protection from others and the gains in closeness and comfort in private life began to be viewed as privileges, driven by the new sense that what is at stake is a fulfilment of a meaningful and significant life in one’s ordinary life. The withdrawal of the family from the influence of society gave rise to the formation of voluntarily formed ties, involving an assertion of personal autonomy against the demands of authority. The dignity of the householder, the family, and the private citizen, as opposed to the priest, noble, or warrior was part of what animated democratic politics.⁸ The conception of the autonomous and independent self was integral to the revolutions of the 18th century in the Americas and France that have shaped politics today. The Reformation was thus pivotal to the development of the concept of privacy, which, in turn, was central to the unfolding of modernity.

What made the Reformation such a defining moment for the history of privacy was its invention of the idea of faith as an individual, thus private, affair. Following Martin Luther’s declaration of his 95 Theses in 1517, the Reformers wanted an observance less defined in the mediatory agents of the Roman church, including its sale of indulgences, Latin liturgy, sacramental rituals, confessional priests, and intercessory saints.⁹ These changes to the practice of religious faith abandoned the Catholic understanding of the sacred—the notion that there are

⁷ Ibid., 291.

⁸ Ibid., 25.

⁹ Orlin, Lena Cowen. 2007. *Locating Privacy in Tudor London*. OUP Oxford, 193.

special places, times, actions where the power of God is more intensely present. In rejecting the mediating role of the church in religious life, the Reformers downplayed the exceptional and elevated the ordinary.¹⁰ As a result, one's personal commitment to God in everyday life became all important. The Reformers valued direct and immediate experience, which was facilitated by Bible translations that made scriptures accessible to lay readers and by devotional texts published for household consumption. By abandoning Catholicism's separation of the sacred from the everyday, the Reformation cultivated the idea of faith as a private matter.

The Protestant Reformation's cultivation of interiority, self-examination, and self-determination of spiritual life and affirmation of ordinary life as the center of the good life became the basis for the concept of privacy we have today. The reason behind the Reformation's privileging of ordinary life and a more private devotion was not necessarily the desire for privacy but the rapid transitions of state religion that took place uniquely in England, which created a space in which all persons of faith were understood as persons of private conscience, responsible for, and capable of, their own spiritual life.¹¹ As a result, an observance grounded in direct, immediate, and private experience of faith was more desirable. Privacy is thus indebted to the Reformation and the Protestant conception of the self.

While this concept of the self has since continued to evolve, the religious beliefs that undergird our idea of selfhood and the meaning of privacy are not limited to the Reformation or the Christian world. Some of the most foundational texts on privacy from the American legal tradition, for example, are inspired by the values on spiritual life from the Protestantism of colonial New England. Samuel Warren and Louis Brandeis's "The Right to Privacy" (1890),¹²

¹⁰ Taylor, 217.

¹¹ Orlin, 10.

¹² Warren, Samuel D., and Louis D. Brandeis. "The Right to Privacy." *Harvard Law Review* 4, no. 5 (1890): 193–220. <https://doi.org/10.2307/1321160>.

the first legal text defending the right to privacy in the U.S., makes a case for privacy that is distinct from property rights and protection against libel and defamation but provides a “right to be let alone” and a right to an “involute personality” even when the violation of these rights does not harm anyone’s reputation. Dorothy Glancy argues that Warren and Brandeis’s defense of privacy is indebted to the prioritization of spiritual independence associated with Ralph Waldo Emerson, Henry David Thoreau, and Emily Dickinson, whose inspiration she attributes to the Protestant settlers of the North American colonies, who valued individual judgment in matters such as religion and lifestyle. She writes:

Warren and Brandeis were concerned about freedom from a specific type of interference: not physical interference, but psychological or “spiritual” interference with individual personality [. . . T]his negative freedom aspect of the right to privacy was not simply an end in itself. It was also a means by which the individual could foster and maintain another [. . .] aspect of the right to privacy: the individual’s capacity affirmatively to control his or her own life and personality, in part by controlling information about his or her private life.¹³

Warren and Brandeis’s relatively recent text was foundational to the development of privacy law in the United States. Privacy had already been considered important prior to this article, but there had not been any legal basis for the protection of privacy. Warren and Brandeis wrote that the invention of new technology, like the handheld camera of 1888, and the growth of intrusive journalistic practices in their time gave rise to their sense that privacy was threatened and needed to be protected by law.¹⁴ Their article introduced the basis for which one can seek private remedy

¹³ Glancy, Dorothy J. “The Invention of the Right to Privacy,” 21 Ariz. L. Rev. 1, 41.

¹⁴ Warren and Brandeis, 195.

for the invasion of privacy through a lawsuit, arguing that the law grants such a right to privacy given how the law “[recognizes] man’s spiritual nature, of his feelings and his intellect.”¹⁵

Although their conception of privacy covers only individual wrongdoings, not systemic problems involved with information flow, their defense of privacy prophesied that “mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the housetops.’”¹⁶ This modern concept of privacy for which Warren and Brandeis provide the basis emerged out of the theological motivations of Protestantism. The values that the “right to be let alone” would preserve are consistent with those underlined in the Reformation: introspection and the space to shape one’s own everyday life.

Warren and Brandeis justified the need for privacy within the context of a higher objective of discerning and refining one’s spiritual life, a continuation of the Reformation’s construction of faith as private. When faith became a matter of private life, it was no longer subjected to the confessional and became subjected to a divine gaze. While the Protestant self was responsible for its own devotion to God, it was held responsible to God. One’s relation to a Protestant God could be compared to the dynamic of the Catholic practice of the confession, Alan Sinfield writes, except the focus on personal reflection and prayer shifts the affairs inside the consciousness.¹⁷ With the Protestant rejection of the sacred, the previous “higher” forms of life, which had belonged to the vocations of monasticism, were also dethroned and everyday life at work and in the family became the center of the good life.¹⁸ Life’s meaning came from whether one lived fearfully in ordinary life, not just in the church or the sacred realm. That meant

¹⁵ Ibid., 193.

¹⁶ Ibid., 195.

¹⁷ Ibid., 163.

¹⁸ Taylor, 13, 185.

that the disciplining power of faith was no longer bound to the confessional but applied in everyday life. Michel Foucault describes the confession in his *History of Sexuality* (1976) as a comparable process of interiority and self-construction:

The confession is a ritual [. . .] that unfolds within a power relationship, for one does not confess without the presence (or virtual presence) of a partner who is not simply the interlocutor but the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile; [. . .] a ritual in which the expression alone, independently of its external consequences, produces intrinsic modifications in the person who articulates it: it exonerates, redeems, and purifies him; it unburdens him of his wrongs, liberates him, and promises him salvation.¹⁹

The Reformation's mechanisms of personal contemplation that we might understand as more private is based on the construction of a subject of surveillance not very different from that of Catholicism. Instead of the priest, the interlocutor of the Protestant subject was God, an authority vastly more powerful and incomprehensible. That authority then moves into the conscience of the individual, who evaluates their own fate as if assuming the eye of God. In another sense, that gaze was internalized, thereby making the subject responsible for itself.

What animates the Reformation's self-examination and interiority is thus not exemption but scrutiny. The Reformation's emphasis on a more private practice of faith does not release the subject from responsibility, but situates it in a state of anxiety and insecurity—in the condition of being the subject of an all-knowing God. Instead of signs of a failure to engage with the divine, they represent an authentic engagement with God. In a time more commonly known to us for its private practice of faith, cultivation of interiority, self-examination, and personal responsibility

¹⁹ Foucault, Michel. *The History of Sexuality: Volume 1*, trans. Robert Hurley. New York: Random House, Vintage Books, 1980, 61–2.

for spiritual life,²⁰ the self, with all of its inwardness, self-reflection, and freedom, was the subject of an interiorized divine gaze. This makes the Reformation a paradigmatic moment in which privacy was a reaction to excessive authority, in this case the Catholic church, and subject to another, the divine gaze. Private devotion was in other words the common ancestor of both privacy and surveillance, of the self that is invoked against and subjected to authority.

Warren and Brandeis' article is an example of the way in which the theological roots of privacy left an indelible mark on its secular development today. In this case, the theological priority of spiritual life had a direct influence on the foundational text of privacy law in the United States. When they argued for the need for the law to provide everyone a space of "spiritual" independence, the idea was not simply that our thoughts, emotions, and feelings should remain free of manipulation, but need to be cultivated. Implicit in Warren and Brandeis' defense of privacy is this aspiration toward a cultivated self, against the fear of the tendency of democratic societies toward homogenization and the power that democracy gives to mediocre opinion. The aspiration to cultivate exceptional skill and opinion, to be an active contributor in a vibrant and productive society, was a central component of their legal defense of privacy.

The interiority of the subject of privacy as Warren and Brandeis understood it took the form of spiritual insecurity intrinsic to the Protestant approach to God. The Protestant determination to create a more immediate relationship between humanity and God presumed a gulf between them that one was anxious to cross, Sinfield writes.²¹ A higher objective of spiritual life and the anxiety of failing to live up to it is maintained in the American legal basis for privacy. Luther's writings articulate the theological basis for this notion. "There are two

²⁰ Orlin, 193.

²¹ Sinfield, Alan. *Faultlines: Cultural Materialism and the Politics of Dissident Reading*. Clarendon Press, 1992, 159.

kingdoms in the world, which are bitterly opposed to each other,” Luther declared. “In one of them Satan reigns. . . . He holds captive to his will all who are not snatched away from him by the Spirit of Christ. . . . In the other kingdom, Christ reigns, and his kingdom ceaselessly resists and makes war on the kingdom of Satan.”²² The opposition between the realm of humanity and the realm of God is stark: we are sunk in sin unless God reclaims us; then we are immediately among the saints. The self-consciousness and interiority of the Reformation was constituted in an attempt to demonstrate one’s relation to an omnipotent God who acted independently of human institutions.

The private self is thus indebted to the self of the Reformation that is constituted by being in the view of higher power. One might suggest that, for Warren and Brandeis, the role of God is filled by an internalized set of normative aspirations that should inform one’s choices in life, from one’s sense of duty to take care of one’s spouse or family to one’s aspiration to be an enthusiastic contributor to a vibrant democracy. The privacy of the spiritual realm defended both in the Reformation and by Warren and Brandeis was, in other words, not a place of unbounded freedom but uncertainty, speculation, anxiety, even anguish at the face of the possibility of guilt and bad conscience. For the Reformers, Sinfield writes in other words, “The idea was not to relax, but to savor the nuances of one’s spiritual condition.”²³ That spiritual condition is one of insecurity, which was desirable in the Reformation. It was the sign of an authentic encounter with the divine gaze.

Echoes of the religious origins of modern subjectivity marked by interiorized authority can also be found in Foucault’s account of surveillance in *Discipline and Punish* (1975). In fact,

²² Ibid.

²³ Ibid.

throughout his work, Foucault also outlines the evolution of the concept of self—except not to demonstrate how it becomes the basis for the meaning of privacy. Rather, his account of the modern concept of self becomes the basis for his critique of surveillance. As Stephanos Geroulanos points out in “Theoscopy,” Foucault’s writing on the Panopticon identifies a coherent theological paradigm behind the structure of the Panopticon, an analogy he uses for modern power.²⁴ My intervention here is that the genealogy of the self should not begin with the Enlightenment philosopher Immanuel Kant. There is a striking parallel between the Protestant notion of the self and Foucault’s account of the prisoner. Tracking the history of the concept of the self not just to the Enlightenment but back to the Reformation will cast doubt on whether privacy, an idea that is indebted to the Protestant subject of divine power, sufficiently opposes surveillant authority.

Foucault writes that power in the Panopticon is activated by the prisoners’ subsumption of certain theologically inflected—and at times even overtly Protestant—beliefs about the self. First, as Geroulanos shows, the prisoner must process the lack of evidence of the presence of a supervisor not just as a visible unavailability but as an epistemological unavailability.²⁵ According to this logic, because the prisoners do not know whether they are being watched, they must act as if they are constantly being observed. Understood as not completely knowable, the presence of the prison guard assumes the gaze of an omniscient force. This way, the epistemological unavailability of the observer confirms its existence and the very center of the structure, where the prisoner presumes a person is looking, acquires a forceful status like a god. Foucault calls this process of assuming that the self can be known infinitely beyond its finite

²⁴ Geroulanos, Stefanos. “Theoscopy: Transparency, Omnipotence, and Modernity.” *Political Theologies: Public Religions in a Post-Secular World*, November 2006, 633–51.

²⁵ Ibid.

knowledge of itself the “analytic of finitude.” Second, the prisoner must subsume what Foucault calls the “ethic of visibility.” Not only can the self be known in its totality by the omniscient other, it must be. What, in other words, assures the automatic functioning of power in the Panopticon is the prisoner’s belief not just that he is wholly visible to the other but that this transparency is also valuable to the prisoner and the entire community. Foucault, writes Geroulanos, refers to Jeremy Bentham’s postulation “that the population of the entire town where the prison is built could take turns in the tower, thereby enforcing a morality common to the society that stands outside the Panopticon and profits from it.”²⁶ While the Panopticon ties the prisoner to the community in a manner that is epistemologically inaccessible to the prisoner, the prisoner must accept the moral value of being observed by the community. The prisoner’s adherence of the analytic of finitude and the ethic of visibility, two theological values with theological bases, makes them an exemplar of the Protestant self that is wholly knowable, without which the Panopticon would not function.

The epistemological beliefs that enable the Panopticon to have control over the prisoners’ behavior are most concretely articulated in Kant’s philosophy. In *The Order of Things* (1966), Foucault recapitulates the development of the Enlightenment concept of man and critiques the idea that man can provide for himself the conditions for independence from mechanisms of domination. Foucault locates the emergence of modern man in Kant’s manufacturing of the transcendental realm, in which reason can operate independently from the empirical world and be subordinated to the mind. Kant’s invention of the transcendental followed the challenge of other early modern philosophers, such as René Descartes and John Locke, of enabling man to emerge as both a subject and an object of investigation. Against these philosophers who

²⁶ Geroulanos, “Theoscopy,” 642.

preceded him, Foucault writes, Kant showed that we cannot know things in themselves but can know things based on our experience of them. This meant that Kant took knowledge to be mediated by our faculties, which impose order onto the sense data it receives, and thus enabled by our finitude. If knowledge were not connected to objects, empirical reality could not guarantee the normative validity of knowledge. This is why Kant wrote that man, with his finite mind, had to be the domain in which the grounds of knowledge could be established. With Kant's transcendental realm, man became the site of reason insofar as he was both ruled by reason and an embodiment of reason. Foucault critiques this notion of the self-determining subject with Kant's own argument that, rather than the liberating ground, universal reason is the ruler or producer of freedom.

When Foucault critiques Kant's conceptualization of man, I believe he isolates the theological core of Kant's philosophy. The epistemological conditions that Foucault identifies in the Kantian paradigm are part of the enduring consequences of the Reformation. In the *Critiques*, Foucault writes, Kant reproduces the religious subject in his construction of the "empirico-transcendental" man, a finite figure capable of knowledge that exceeds the subject's finitude. For Kant, in other words, man is a transcendental subject that is also an empirical object. The positioning of man in the empirical as well as the transcendental realm, for Foucault, has survived throughout modernity and certainly in his Panopticon analogy. Foucault's approach to the Kantian self as a construct of self-knowledge from *The Order of Things* continues to be relevant for his political thought in *Discipline and Punish*.²⁷ In his account of the Panopticon, the power asymmetry between the one seeing and one seen activates the "empirico-transcendental" man, a Kantian subject that undergirds the divine gaze of surveillance. This Kantian conception

²⁷ Geroulanos, Stefanos. *Transparency in Postwar France: A Critical History of the Present*. Stanford University Press, 2017, 639.

is a subject that is knowable and capable of knowing. While the empirical nature of man grounds him in a knowable reality, its transcendental nature gives it protection from outside ruling forces like the laws of nature, allowing it to exist on the level of divinity even if Kant's writing is not theological in substance. This subject is effectively a finite being that has interiorized a divine gaze.

Foucault's discussion of Kant's analytics of finitude and his notion of the transcendental thus culminates in a theory of a theologically conceived modernity. Foucault's use of Bentham's Panopticon as an analogy of modern surveillance captures how the theological framework of Protestantism is reproduced in the Enlightenment notion of man. In Foucault's depiction, the way in which the tower allows the guard not to be present enables power to be constantly and unflinching enforced as if the guard was always present. The Panopticon turns power into a structure that does not require an agent. The prisoners of the Panopticon believe that someone is always watching them, and have internalized the gaze, through a theological interpretation of finitude. The combination of the prisoner's recognition of epistemological finitude, the limits of one's knowledge of the prison guard, and the aspiration of self-knowledge, which inverts the very basis of the finitude into a belief in omnipresence, is the dimension of Christian thought that persists in the Panopticon. The origin of the modern concept of self that Foucault critiques in his writings on surveillance comes from the theological, thus pre-modern, context of the Reformation. In short, the Protestant subject of private devotion returns as Foucault's subject of surveillance. The fact that the prisoner is entirely transparent to the observer and that the prisoner cannot see back results in the construction of an omnipresent other in a way that repeats the Protestant construction of the self in relation to a divine other.

Foucault's religiously inflected reading of the Panopticon helps show how the Reformation was crucial to the writing of man both as entitled to privacy and as the subject of surveillance. Put simply, Foucault's account of the prisoner, in which the divine gaze is the foundation of modern power, is the self of the Protestant Reformation. Both Protestantism and modernity presume both an inviolable, "private" core in the self that is "breached" by surveillance and a self that is inextricable from its responsibilities for society. The tension between these two conceptions of the self, which originate in the Reformation, is preserved in modern philosophy. It is true that Kant was critical of religious doctrines that took spiritual authority as the basis for knowledge and freedom—his project was, as he writes in his essay, "Answering the Question: What Is Enlightenment?" (1784), to establish reason as their ground. But for Kant, the autonomy of reason does not exempt the self from all external constraints, such as the categorical imperative: the moral obligation to act only according to the maxim that one wishes all others would follow. Kant's use of reason as the ultimate guiding principle of the Enlightenment reinstates the position of God in religion. Kant defines Enlightenment as a moment when humanity puts its own reason publicly and freely, yet in conformity to what is given by this reason. Universal reason, in a way, replaces divine authority while keeping its position and function in place. When Kant introduces the distinction between public and private uses of reason, he reinforces the internalized status of authority in the reasonable being. When reason is used publicly (as opposed to privately, circumscribed by one's social duty to a particular group) the individual agrees to conform to the principles they establish with their reasoning. The Kantian subject is therefore bound to a "contract of rational despotism" in which it can freely exercise thought yet must submit to reason.²⁸ The subject of the Enlightenment,

²⁸ Foucault, Michel. "What is Enlightenment?" *The Foucault Reader*. Paul Rabinow, ed. Pantheon Books, 1984, 37.

while being a voluntary agent of social progress without whom the Enlightenment would not be possible, is inseparable from the reasonable being that obeys the results of its own reasoning.

If privacy is conceived as a defense of the interiority of the self and ordinary life, I would argue, it is an inadequate defense to surveillance. Man, as the subject of divine power, remains bound to the structural domination Foucault identifies in modernity. Foucault believed that the interiority of the modern subject makes it not only the subject of agency but, more importantly, the object of domination. Foucault's rejection of the modern concept of the self prevented his critique of modern power to constitute a defense of privacy. Namely, Foucault's conceptual history of modern subjectivity amounted not to a defense of privacy but a critique of surveillance. While the Protestant view of the self was autonomous in the sense that it was responsible for its own way of devotion, its autonomy was inseparable from the interiorized authority of God. The prisoner of the Panopticon had similarly interiorized the gaze of the prison guard in such a way that rendered them self-regulating but obedient to the internalized gaze at the same time.

The theological notion of interiorized authority is a constitutive part of the modern conception of the autonomous self: both having an ethical obligation toward the other and claiming a private realm that could not be violated. Like Kant, John Locke, writing shortly after the Reformation, formulated a concept of man that is subjected to a divine authority despite its stated autonomy from higher authority. Under his theory of natural rights, man was supposed to have the authority to establish and enforce its own laws instead of being under the law. But theological authority remained a fundamental feature of his secular notion of man. In *Some Thoughts Concerning Education* (1693), Locke gave the father almost absolute power to regulate the behavior of his child and to inculcate values and habits in him:

Every man must some time or other be trusted to himself and his own conduct; and he that is a good, a virtuous, and able man, must be made so within. And therefore what he is to receive from education, what is to sway and influence his life, must be something put into him betimes; habits woven into the very principles of his nature, and not a counterfeit carriage, and dissembled outside, put on by fear, only to avoid the present anger of a father who perhaps may disinherit him.²⁹

According to Locke, man could only emerge as an agent that could be held responsible for himself through his fear of the father and the disciplined interiorization of his word.

The emphasis that Locke places on the importance of parental authority in the development of the self suggests that liberalism is no less authoritarian than any other system, only that it feels more free.³⁰ Locke's liberal conception of man relies on the subjection of the self to divine authority. The central aim of the educational program that Locke prescribed in his liberal conception of the self was to teach the child to revere his father's authority the same way he would subject himself to God. At the foundation of education, Locke wrote, the parent must "instil into him a love and reverence of this Supreme Being."³¹ The implication was that the father's power was supposed to appear to the child as the power of God. Once the child interiorized paternal authority as if it were divine, the child's reverence for authority would continue past his childhood:

²⁹ Locke, John. *Some Thoughts Concerning Education*. University Press, 1892. §42.

³⁰ Carrig, Joseph. "Education to Virtue and the Politics of Liberty." Order No. 3003608, University of Pennsylvania, 2001. <https://search-proquest-com.proxy.library.cornell.edu/docview/304718006?accountid=10267>. 271 f221.

³¹ Ibid. §136.

Your authority is to take place and influence his mind, from the very dawning of any knowledge in him, that it may operate as a natural principle, whereof he never perceiv'd the beginning, never knew that it was, or could be otherwise.³²

Like the relationship that the Reformation established between the self of private devotion and divine authority, Locke establishes a relationship between the self and divine authority as a necessary step in the development of man. The child's reverence of paternal authority and the inculcation of habits conducive to social order ultimately produces the self in liberalism, just as the self of private devotion emerged in relation to its interiorization of divine authority.

By pointing out to the child what is considered good and what is not, the father was meant to subject his child to his authority, rather than instilling in the child the capacity to challenge him. In his *Second Treatise*, Locke gave the parent a "perpetual right to respect, reverence, support and compliance" from the child, which does not expire when the child becomes an adult but rather "holds in all parts and conditions of a man's life."³³ Locke's conception of the well educated man was therefore not characterized by autonomy but subjection. Locke's emphasis on the need for the child to interiorize his father's authority throughout his life negates the idea that Locke defends the notion of freedom as self-legislation when he defends the idea of a social compact based on the consent of free individuals. If the properly educated man enjoyed any freedom in a liberal society, that freedom was only a perception felt while under the control of his father. The child, for instance, was more often encouraged to follow the example that their parents set for them than forced to follow rules and constraints.³⁴ Locke's pedagogy exploited children's preference for learning that does not

³² Ibid. §100.

³³ Locke, John, and C. B. Macpherson. *Second Treatise of Government*. Hackett Publishing, 1980. §67.

³⁴ *Some Thoughts Concerning Education*. §69.

involve “constant rebukes and brow-beatings” and made the process of subjection feel less forced. The aim was to allow them to view themselves as “rational creatures” even in subjection.³⁵ It was only within the pedagogical program of subordinating the child to paternal authority that the child sensed that he could act freely.

Far from freeing man from external constraints, Locke prescribed an educational program that subjected man to a happiness that was not truly his own even though obedience might make him happy. Locke similarly developed the idea of property that was not exempt from the imperative to work industriously for it. He took as given that “God gave the world to men in common” and that “it cannot be supposed he meant it should always remain common and uncultivated,”³⁶ thus viewing the cultivation of land not simply as an activity of self-presentation but an order that makes him worthy of owning property. Property was only legitimate if it were the product of hard, disciplined work, because

[God gave the world] to the use of the industrious and rational, (and *labour* was to be *his title* to it;) not to the fancy or covetousness of the quarrelsome and contentious. He that had as good left for his improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another’s labour.³⁷

Because only hard work, discipline, education, training, subordination, and industriousness could authorize one to acquire private property, freedom, according to Locke, could only come with the interiorization of authority. Critically, man’s subordination to the divine imperative to work hard also legitimized colonial conquest. For Locke, man’s industry and labor separated him from the savage Indians, who left America a “wild woods and uncultivated waste,” and even exempted

³⁵ Ibid. §41

³⁶ *Second Treatise of Government*. §34.

³⁷ Ibid.

the individual from needing the consent of others to enclose others' lands. But this authority to dominate others came with the central caveat that one revered the authority of God, his father, and his social order. Locke's concept of the autonomous self was far from exempt from external authority and was not allowed to act upon one's own will. By requiring man to control one's self as his own property, Locke develops a notion of the self that is fundamentally unable to resist authority. Man's subjection to paternal authority made him antithetical to the ideal of the free or rational man that could define his own laws. If the child resisted against the father, the child had to be made to feel worthless against the will of the father, as if he were confronting the authority of God. By being disciplined to revere authority, interiorize the father's word, and cultivate an ability to control one's impulses, man could become a subject of a stable social order and agent of colonial power.

To say that Locke's liberal commitment to the free and rational individual is inextricable from the Reformation's interiorization of authority not to say that it is necessarily dependent on the religious belief in an actual God or in eternal life. Instead, the secular commitment to the idea that life in its finitude is the highest value is entirely compatible with the interiorization of higher authority. If Locke inherits the questions that the Reformation posed in a theological context, regarding the self and the good life, his answers only displace the necessity of securing divine salvation with the secular pursuit of happiness through discipline, training, industriousness, and ingenuity. The Protestant conception of the self survives in liberalism's imperative to use one's self toward a prescribed objective.

The Lockean notion of rationality reinscribed in the secular worldview the Reformation's theological privileging of ordinary life that increased the private realm and, crucially, expanded the reach of the spiritual authority of God to the everyday. Taylor shows how similar the role of

reason or rationality was for both Locke and Kant in that they were consistent with the theological ethic of “living according to the design of things.”³⁸ “What makes the proper way of life good” in modernity, Taylor writes, “is not that it reflects the inherent rank of certain activities as rational, but that it follows the design of nature, according their proper significance to those activities marked as significant by this design.”³⁹ For Locke, the concept of the self-grounding and right-bearing individual was an integral part of the view that man is designed to acquire the means to life. This activity of self-reservation is given central importance and dignity in liberalism. The conceptualization of society as a collection of right-bearing individuals is therefore the result of following what Locke views as God’s design. For Locke, the fact that God calls the self to a particular activity gave the activity a higher significance, but also entails a duty to work hard at it:

For the desire, strong desire of Preserving his Life and Being having been Planted in him, as a Principle of Action by God himself, Reason, which was the voice of God in him, could not but teach him and assure him, that pursuing that natural Inclination he had to preserve his Being, he followed the Will of his Maker.⁴⁰

Following God’s will to design man as a self-preserving and productive entity, Locke’s liberal vision of society prescribes the objective of working toward that task. In liberal modernity, autonomy is thus grounded in responsibilities that cannot be forfeited. The autonomous self thus emerges only when it recognizes that higher duty.

If, in the Reformation, the choices of ordinary life took meaning from a theological picture of what it means to act according to God’s word, Locke extended the Reformation’s

³⁸ Taylor, 279.

³⁹ Ibid.

⁴⁰ Quoted in Taylor, 238.

prioritization of ordinary life and interiority to the design of broader society. In the secular context, the self is no longer contextualized within a scheme of value higher than itself. But the recognizability of the liberal self is dependent on the recognizability of its active cooperation in a scheme of rationality. The motto of Bernard Mandeville's *Fable of the Bees* (1714), "Private vices, public benefits," captures how Locke defines each person's rational pursuit of happiness as the organizing principle of society. According to this motto, the competitive pursuit of self-interest (private vices) could be counted on to yield good effects for society (public benefits). Such thinking, developed by Adam Smith and others, led to the idea that the realm of private society should be kept free from state interference. For Locke, rationality thus assumed the position that God had in the Protestant conception of a good life. Writing shortly after the Reformation, Locke was indebted to the Reformation's acceptance of a finite and morally flawed existence of being impelled by nature to maximize pleasure. He then transposed the question of living worshipfully for God into the question of living rationally. The crux of the moral life became the manner in which one lived one's life rationally.⁴¹ Rather than to aspire for a self-abnegating kind of idealism for which we are not made, Locke believed we should accept our nature and fulfill God's purpose in it.⁴² Locke's early liberalism, in other words, could be seen as a secular transposition of the theology of ordinary life in which the divine gaze was replaced by rationality while preserving the position of the divine gaze.

The liberal notion of autonomy that Locke defends does not stand alone and is indebted to the Reformation. When the Reformation prioritized the life of production and the family, it created a space that was left in private precisely to regulate the way one uses that space. For

⁴¹ Ibid.

⁴² Ibid.

example, Max Weber's *Protestant Ethic and the Spirit of Capitalism* (1905) concerns how individuals religiously pursue their secular vocation in capitalism. The rational pursuit of economic gain, for Weber, has a theological structure: man worked due to a compulsion to demonstrate that he was chosen for salvation. This is the logic of predestination, a Protestant doctrine, that Weber identifies in secular labor. The theological belief that one had no assurance of salvation, Weber argues, is one that can operate even in the absence of religious authority. Similarly, the Reformation played a role in shaping the modern understanding of privacy and modern surveillance, but in a subtly different way. In Locke, as in Kant, rationality was the regulating principle of private life, which was not exempt from public scrutiny. Locke's liberalism and rejection of state intervention in economic activity, which became the basis for Adam Smith's idea that the realm of private life should be kept free from state interference, did not render private life exempt from being ordered by the pursuit of accumulating capital. Both Protestant and liberal conceptions of privacy simultaneously presumed an inviolable realm of the person and the person's inevitable subjection to external authority.

Man under liberalism is therefore an inherently private self whose privacy is not a shelter from social control. John Stuart Mill grappled with this internal tension of liberalism when he identified the danger of liberal societies becoming repressive. Mill famously wrote in *On Liberty* against the "tyranny of the prevailing opinion and feeling"⁴³ and that "the public of this age and country improperly invests its own preferences with the character of moral laws."⁴⁴ Mill's fear was directed against the particular public opinion in his time, which he regarded as mediocre and reflecting "the present low state of the human mind."⁴⁵ In circumstances when diverse opinions

⁴³ Mill, John Stuart. *"On Liberty" and Other Writings*. Cambridge University Press, 1989, 220.

⁴⁴ *Ibid.*, 284.

⁴⁵ *Ibid.*, 268–69.

were desirable, as diversity would allow those with better views to struggle against the others, such consolidation of opinion would be “dangerous,” he wrote.⁴⁶ But this was not a necessary condition. He believed that public opinion was a source of strength if disparities between better opinions and public opinion were small. Meanwhile, when public opinion reflected a depraved morality, Mill believed, those with individuality, since they could be ahead of the time and could anticipate future developments, could legitimately act on their opinions and censure the depraved, for their opinions reflected the public opinion that would emerge in the future. Mill speculated about how a consolidation of opinion might develop and how liberty would fare. While he anticipated a consolidation of public opinion and superior opinion, he regarded the diversity of opinion as valuable in any case. Liberty and individuality had an uncertain fate, Mill believed, even in a society that emphasized individual freedoms.

Mill’s critique of liberalism was one that evaluated it on its own terms. According to Mill, liberalism is inherently capable of becoming inimical to its own avowed commitment to freedom. Mill places the fault of the homogenization of liberal democracy on itself when he assesses the conditions of England’s liberal society:

Formerly, different ranks, different neighbourhoods, different trades and professions, lived in what might be called different worlds; at present, to a great degree in the same. Comparatively speaking, they now read the same things, listen to the same things, see the same things, go to the same places, have their hopes and fears directed to the same objects, have the same rights and liberties, and the same means of asserting them.”⁴⁷

⁴⁶ Ibid., 26.

⁴⁷ Ibid., 196.

Despite democracy's supposed commitment to freedom, Mill saw that it does not prevent a "collective mediocrity" from demanding similitude across society.⁴⁸ Since Mill's time, not only democratic ideals, but most of the technology meant to advance individuality, from the automobile to the Internet, has simultaneously restricted it. The car, for example, may be a symbol of personal autonomy, as nothing could be more liberating than the ability to drive wherever and whenever one chooses. Yet few inventions have increased government control over everyday life like the car. Similarly, the commercialization of the Internet led to a great expansion of the freedom of speech and democratic access but has also endangered the privacy of its users. In *On Liberty*, Mill's fear is the tendency of liberal societies to become homogenized and suppress the differentiation of the public sphere. The cultivation of individuality does not defend the individual from external power for Mill. Just as private devotion took place in the view of God in the Protestant Reformation, the liberal self of Mill was not exempt from the power of opinion and the need for state regulation. In turn, Mill's defense of liberty to develop "individuality" inherits the central prescriptive feature of Locke's defense of the inalienable rights. For Mill, democratic societies needed to protect themselves from middling homogeneity by allowing a few to stand out from the majority. Mill's critique of liberalism thus places the individual under threat of both the power of mediocre opinion and the normative aspiration of individuality.

What is theological about privacy is its grounding in a sense of self that is constructed as both inviolable and constructed in relation to higher authority. The pernicious effects of this gaze, such the internalization of a surveillant authority, is part of the structure of the autonomous self defended in the notion of privacy. This should challenge our reliance on the right to privacy

⁴⁸ Ibid., 184.

to ensure that the state or society does not repress our capacities to exercise our autonomy. Privacy is not as a state of exteriority from surveillance but rather holds up the conception of self that is subject to a gaze that is constitutive of the private form of faith invented in the Reformation. As I have shown, the relation between the self and the higher power has been formed and regulated in different ways in the Reformation, liberalism, and Foucault's model of surveillance. But, consistently, the self cannot be reconceptualized without the other. When Louis Althusser, for example, took up Jacques Lacan's formulation of the symbolic locus of the other as a fundamental supposition of any society, he wrote that "the interpellation of individuals as subjects presupposes the 'existence' of a unique and central other Subject, in whose Name the religious ideology interpellates all individuals as subjects," asserting the fundamentally religious quality of the subject, whose concept depends on the assumption of an unbarred other like God.⁴⁹ Althusser identifies an aspect of Christianity that anticipates the presumption that psychoanalysis makes that the self is irreducibly bound to the other. Likewise, Sigmund Freud's writings on the unconscious, like *Group Psychology and the Analysis of the Ego* (1921), conceptualize the gaze of the other as a requirement of sociality. *Group Psychology* offers an understanding of God as an avatar for the structural locus for the other. While this locus of the other exists for anyone with or without religion, the invention of God, for Freud, is a psychic substitute for the father. Religion, in other words, is an infantile regression in which one cannot deal with the absence of the father. Privacy, and the liberal notion of the self with inalienable rights, similarly treats the self as inherently free from external constraints, and violated under a surveillant authority. What was previously a structural locus of the other comes to have a face in the liberal conception of the self, be it the sovereign or the idea of the prison guard of the Panopticon.

⁴⁹ Althusser, Louis. *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses*. Verso Books, 2014, 267.

The freedom that privacy seems to bring can only be understood as a condition of being a subject that is not exterior to but bound up with the other and not entirely opposed to surveillance. This, I believe, frustrates the notion that surveillance violates the right to privacy. The Protestant roots of privacy shows, and Freud, Lacan, and Foucault remind us, the primacy of structure—the position with respect to the person or institution that would occupy that position. This puts into question the fundamental presumption that there might be an inviolable sphere that surveillance would threaten and privacy would protect. The psychoanalytic view shares with Protestant theology the notion that the “other” is already internalized. Surveillance and privacy, in other words, in its historical root of private devotion, are indistinguishable. The positive valuation of privacy may involve an attempt to dispel the symbolic authority of the “other” or evacuate this locus, but the structure remains in place. Restricting or outlawing surveillance on the basis of whether it violates privacy may regulate or limit it, but only by way of upholding an illusion that the self might be free from all external authority.

My central claim, in other words, is that the critique of surveillance cannot involve the recovery of privacy, because privacy upholds the Protestant self whose autonomy is not exempt from subordination. Privacy, however, and the protection of individual freedom, remain to be perceived as safeguards against surveillance. Shoshanna Zuboff’s defense of privacy against surveillance capitalism, for example, is the central thesis of her study of surveillance in digital information technologies. To be clear, she writes that privacy is not a sufficient defense against surveillance capitalism. For her, surveillance capitalism introduces the need for a distinction between “decision rights” and “privacy.”⁵⁰ On the one hand, Zuboff writes, quoting U.S. Supreme Court Justice William O. Douglas, who said in 1967, “Privacy involves the choice of

⁵⁰ Zuboff, Shoshanna. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. PublicAffairs, 2019, 90.

the individual to disclose or to reveal what he believes, what he thinks, what he possesses.” On the other hand, “Decision rights,” she writes, “confer the power to choose whether to keep something secret or to share it. One can choose the degree of privacy or transparency for each situation.” Decision rights, in short, are the power to decide the definition of privacy. Zuboff illustrates how decision rights are distinct from privacy in her discussion of the way social media companies use user data for profit. Based on data collected on people’s activities, data, companies generate and sell their predictions of their future activities. She argues that companies are able to keep their surveillance operations secret and undetectable, by taking data from users without asking and by employing that unilaterally claimed data to work in the service of others’ gain. What designates these companies’ capacity to decide, without consequence, what is disclosed and what is kept secret is what Zuboff calls decision rights. As opposed to simply collecting and using information in inappropriate ways, according to Zuboff, the contestation of these companies’ inappropriate collection and use of information is forced off the table of consideration by keeping its information operations off limits. By keeping their data operations secret, companies have precluded the possibility for the public contestation the use of their data, or for raising a privacy concern. When the system of surveillance capitalism prevents consumers from knowing how their information is used, the invocation of privacy is therefore not a sufficient counterforce for Zuboff. What is required instead is the reclaiming of decision rights by consumers. Zuboff proposes some interventions, such as the regulation of the capture of consumer information, the analysis of this data to predict future activity, and the sale of these predictions by companies.⁵¹ These measures constrain the collection of consumer data at a level

⁵¹ Zuboff, Shoshana. “Google as a Fortune Teller: The Secrets of Surveillance Capitalism.” *Frankfurter Allgemeine Zeitung*. <https://www.faz.net/1.4103616>. Accessed 10 Oct. 2019.

beyond what requiring companies to gain the consent of their consumers to collect and use their data can do. They would do more than simply invoking the individual right to privacy.

Clearly her work is not limited to the mere defense of privacy but a critique of the market forces that govern the flow of information. At the same time, Zuboff's goal is to modify how capitalism works, not to reject it—in other words, as she writes, to “reassert the primacy of the liberal order.”⁵² In a review of Zuboff's book, Evgeny Morozov argues that Zuboff fails to demonstrate that “data extraction and behavior modification not as occasional consequences of capitalist competition, but as the underlying causes that propel the emergence of the new economic order.”⁵³ In treating what she calls surveillance capitalism as an aggregate of individual firms responding to imperatives of capitalism, Zuboff's intervention consists in the rehabilitation of capitalism and liberal democracy—the kind that does not involve behavior modification. Zuboff's defense of what she calls the “right to sanctuary” is consistent with her defense of liberalism. Her notion of “sanctuary” sustains the view of the self we inherit from the Reformation: centered on the ordinary life of production and the home. Her concept of sanctuary resembles Warren and Brandeis' notion of the “right to be let alone.” To her, this sanctuary privilege is an inviolable notion of privacy that she says is necessary for the cultivation of “solitude, isolation, anonymity, reserve, intimacy with friends, and intimacy with family.”⁵⁴ Zuboff's critique of surveillance capitalism is driven by the fear that it endangers privacy and the defense of privacy against the force of surveillance.

If privacy and the liberal self are, as Zuboff writes, prerequisites for autonomy from surveillance, they are not sufficient prerequisites. As my genealogy of privacy has shown,

⁵² Ibid.

⁵³ Morozov, Evgeny. “Capitalism's New Clothes.” *The Baffler*, February 4, 2019. <https://thebaffler.com/latest/capitalisms-new-clothes-morozov>.

⁵⁴ Zuboff, 479.

privacy is inextricably linked to surveillance and the autonomy that privacy enables is under a constant threat from within. The history of privacy also shows why privacy has so long been seen as a shelter from surveillance. Ever since the center of life first came to be associated with interiority, the freedom of the mind, and one's private life during the Reformation, withdrawal from publicity seemed to provide shelter from social control. The more space one had to cultivate one's self in withdrawal, the more freedom it would seem to afford them. For Helen Nissenbaum, for example, new information technologies such as the internet and social media have introduced a new definition of privacy. She develops the notion of "contextual integrity", a tool that she uses to evaluate public surveillance, and writes that personal information, even when gathered in public, can be abused. By looking for norms governing the "information flow," the question of whether surveillance practices violate contextual integrity can be used to evaluate the various kinds of information transmission that digital technology has enabled.⁵⁵ Even when public surveillance may not concern the intimate and personal sphere of people's lives, she argues, the inappropriate use of publicly available information can lead to the manipulation and domination of individuals by others. Nissenbaum's conception of privacy, however, fundamentally does not depart from the liberal concept of privacy as a defense of the autonomous self. In her defense of privacy, Nissenbaum draws on the work of Alan Westin, who wrote that privacy "enhances personal autonomy."⁵⁶ It is still liberal selves who are protected by contextual integrity in the public arena. While the goal is to assert the autonomy of the self, the centrality of privacy in Nissenbaum's critique of surveillance limits it to a mere regulation or limitation. A more complete critique of surveillance would reverse its internal Protestant

⁵⁵ Nissenbaum, Helen. "Protecting Privacy in an Information Age: The Problem of Privacy in Public." *Law and Philosophy* 17, no. 5/6 (1998). <https://doi.org/10.2307/3505189>, 137.

⁵⁶ *Ibid.*, 591.

mechanisms and assumptions, therefore look beyond the autonomous individual sustained by privacy.

The fact that the concepts of privacy and surveillance have the same root prevents privacy from being exterior to surveillance. As I have shown, the Reformation is not merely a genealogical heritage that informs the stakes of privacy and surveillance. The Protestant notions of both privacy and surveillance have set up the logical inevitability of the divine gaze under which no freedom from external constraints is possible. Power in 21st century surveillance also operates through a Protestant logic in today's world of ubiquitous computing—in parallel to the Panopticon. In Zuboff reports that, when the future wealth of companies like Google, Facebook, and Microsoft hinges on their collection of their customers' personal information, the common aim of these companies is to develop devices that collect data, from everywhere from office interiors to entire cities, and estimate other parameters derived from the data to develop a “virtual sensor environment.”⁵⁷ The end goal would constitute a “digital omniscience . . . a pervasive everywhere augmented reality environment,” in the words of Joseph Paradisio, the director of a division of the MIT Media Lab that has invented some of the most influential capabilities of surveillance capitalism like data mining and wearable technology.⁵⁸ Surveillance capitalism, in this formulation, directly reintroduces the divine gaze of the Reformation. Zuboff describes how advertisements for Google Home portray “loving families leading busy, intricate lives but visibly relieved to return home and fall into the arms of this omniscient, efficient caretaker.”⁵⁹ She also tells of a deal that Amazon made with home builders in 2018 to install its Dot speakers directly into the ceilings of new houses as well as Echo devices and Alexa-powered door locks, light

⁵⁷ Ibid., 208.

⁵⁸ Ibid.

⁵⁹ Ibid., 262.

switches, security systems, door bells, and thermostats, not simply to give residents more convenience but to construct a form of quasi-divine clairvoyance:

The company wants to sell real-world services such as house cleaning, plumbing, and restaurant delivery, but according to some insiders, the vision is more far-reaching: an omniscient voice that knows all experience and anticipates all action. Already, forward-looking Amazon patents include the development of a “voice-sniffer algorithm” integrated into any device and able to respond to hot words such as “bought,” “dislike,” or “love” with product and service offers.⁶⁰

Digital omniscience would render the intimate patterns of the self, such as one’s personality, moods, emotions, lies, and vulnerabilities. On a wider scale, Zuboff writes, this model of rendering and predicting social behavior is embraced by Sandy Pentland, another MIT Media Lab scientist, as the “God’s eye view.”⁶¹

The Kantian notion of man as the knowable subject, and the underlying analytics of finitude that Foucault identifies in it, remain central to 21st century surveillance. José van Dijck argues that “dataveillance,” the continuous monitoring, prediction, and modification of behavior through digital information technologies, is staked in the belief in the knowable self and its popularization as a neutral paradigm.⁶² The gradual acceptance of the sharing of personal information via social networking sites or apps as the new norm, as well as the sharing of personal data with third parties and intelligence agencies, have been the result of a gradual normalization of a particular belief in the quantification and tracking of life. The epistemological assumptions implicit in Kant’s logic of self-constitution are, in other words, integral to the logic

⁶⁰ Ibid., 269–9.

⁶¹ Ibid., 418.

⁶² Van Dijck, José. “Datafication, Dataism and Dataveillance: Big Data between Scientific Paradigm and Ideology.” *Surveillance & Society* 12, no. 2 (2014): 197–208.

of dataveillance. The conceptual history of the modern self is inseparable from the logic of surveillance. Following Foucault's critique of Kant, I would therefore argue that the critique of dataveillance must also articulate a rejection of the modern conception of the self. As long as privacy sustains the self, it reproduces part of the structure of dataveillance and the divine gaze.

It may seem that one difference between the divine gaze of the Reformation and digital omniscience is that on the internet, no one is trying to control anyone, merely observe. Technology capable of providing individually curated content to individuals reinforces the self in such a way that may seem to vacate the divine gaze and surveillance. Meanwhile, there should be no illusion that the internet isolates the individual. The self becomes part of a global communication and computer network that connects it to the social realm, allowing power to flow between individuals, if not in a hierarchical way as in the Reformation. The goal of corporate uses of big data is to change consumers' behavior through these networks—or, more precisely, to amplify certain existing behaviors and discourage others, if not radically alter them.⁶³ It is also a myth that the sheer exposure of information does not immediately impact the person. The influence of surveillance, as Foucault wrote, is in the internalized gaze. Even the chance that private data may be repurposed by the state is enough to influence behavior, even without considering the potentials of behavior modification. With the continuous nature of the tracking of data in the case of digital surveillance, there has been an explosion in the amount of data that can be traced back to identifiable individuals. Persons living in future ubiquitous computing environments can, with almost absolute certainty, assume that they are being observed—in contrast to the classical Panopticon where nobody could be certain whether they are actually being monitored. Investigations have already found a company that has gained

⁶³ Chun, Wendy Hui Kyong. *Updating to Remain the Same: Habitual New Media*. The MIT Press, 2016, 58.

access to billions of public images scraped from Facebook, YouTube, Venmo and millions of other websites and built a facial recognition database that reaches far beyond anything that the United States government or Silicon Valley giants have ever constructed, shifting our understanding of how much privacy we have.⁶⁴ If surveillance in the world of ubiquitous computing works primarily to sense reality, it also secures obedience.

The fact that neither Zuboff nor Nissenbaum question the liberal capitalist framework is telling. The concept of privacy is based on the liberal conception of the self. Critiques of surveillance that are limited to a defense of privacy therefore cannot address the surveillant potential of the liberal conception of the self. The Reformation only recognized faith to be a private affair insofar as the individual demonstrated their obedience and exemplarity before God. The liberal tradition similarly construed the self-reliant and independent self as a result of acting according to prescribed objectives. A critique of surveillance that does not rely on the concept of the self that is only recognizable in its concurrence with prior objectives cannot be limited to a defense of privacy. This is why Khiara Bridges' study on the invasion of privacy of Medicaid recipients does not conclude with the mere defense of more equal rights to privacy, but a critique of the normative commitments underlying the liberal self. The knowledge that the government amasses about these individuals, particularly poor black mothers, creates a "panoptic regime,"⁶⁵ she writes, ranging from their physiological characteristics (heart rate, blood pressure, weight) to sociological characteristics (socioeconomic status, citizenship status, the highest level of education achieved, diet, and frequency of exercise), psychological characteristics (in the case of a pregnant woman, for example, whether she is excited or anxious about her pregnancy and the

⁶⁴ Hill, Kashmir. "The Secretive Company That Might End Privacy as We Know It." *The New York Times*, January 18, 2020, sec. Technology. <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>.

⁶⁵ Bridges, Khiara M. *The Poverty of Privacy Rights*. Stanford University Press, 2017, 149.

prospect of beginning her family), and details about the nature of their marriages and relationships.⁶⁶ This kind of information that states collect from Medicaid applicants is used to submit them to the position of a failed laborer and caretaker, Bridges writes.⁶⁷ The profile that the government generates from this data can be used to determine the beneficiaries' future eligibility, for example. The inequality of privacy rights among individuals signing up for government benefits leads Bridges to criticize not only the asymmetry of the right to privacy but the "moral construction of poverty" that drives the state's "suspicion over poor mothers' ability to adequately care for their children."⁶⁸ The total surveillance of poor mothers is predicated on a belief in the belief that the poor are "indolent, sexually incontinent, criminally inclined," thus having a flawed character, Bridges writes. Therefore, she concludes, "poor mothers will only enjoy [. . .] privacy rights that are formally bestowed to them when an individual's economic failure is no longer thought to indicate a flawed character."⁶⁹ Bridges does not openly interpret this exclusivity of privacy as internal to the very logic of privacy and the liberal self. But I believe that Bridges here highlights the contingency of the liberal self sustained by privacy, how it is subject to higher normative commitments like the self of Protestant devotion and of liberalism. The idea of the self that is deserving of privacy is only intelligible insofar as it is viewed as exemplary and obedient. When the state deems the subject to have failed to meet the demand of capitalism—to be a successful purveyor of one's labor—that subject is no longer seen as a self that can be the basis for privacy.

⁶⁶ Ibid., 5, 167.

⁶⁷ Ibid., 168.

⁶⁸ Ibid., 7.

⁶⁹ Ibid., 36.

My account of the theologically conceived and distinctively modern concept of the self shows that the critique of surveillance cannot involve the recovery of privacy. Part of why Foucault does not defend privacy also appears to be due to the centrality of the modern concept of self in his account of surveillance. Both privacy and surveillance, which in turn purportedly violates privacy, have a common origin. Protecting privacy then seems insufficient to counter surveillance. In some ways, Foucault's own writing expresses a fear of the disappearance of privacy in a way that echoes the Reformation's positive valuation of interiority and ordinary life at the heart of the modern conception of the self. Throughout his work, even after rejection of the modern subject, there is still a deep anxiety of the threat of surveillance. In 1983, in the very confidential context of a Canadian Indian review of which probably no more than ten copies were published, Foucault spoke about how deeply his work was affected by the Second World War. This was a rare occasion in which he confided to others what he remembered of his adolescence, in which the war and death were always present:

What strikes me when I try to remember my impressions is that practically all my emotional memories are linked to the political situation. . . . I think that the childhood of girls and boys of my generation was shaped by these important historic events. The threat of war was always at our doorstep; it shaped our existence. And then the war came.⁷⁰

Foucault identifies the Vichy regime's disturbance of his childhood with the genesis of his work. He added: "Our private life was truly threatened. Perhaps that is the reason why I am fascinated by history and by the relationship between personal experience and those events amidst which we find ourselves. I think that this is the point of departure of my desire to theorize." To be clear, Foucault's work, including *Discipline and Punish*, hardly amounts to a defense of privacy. But,

⁷⁰ Quoted in Dosse, François. *History of Structuralism: The Rising Sign, 1945-1966*. U of Minnesota Press, 1997, 145.

writing about Foucault, Stephanos Geroulanos suggests that it seems important to see Foucault's approach as sparked by the intensive state intervention into ostensibly private spaces during the postwar years. "In Foucault [. . .], the fantasy of an anarchic, wild chance at autonomy persists as the very individuality that norm-enforcing practices committed to society's transparency to the state seek to wipe out," Geroulanos writes.⁷¹ But it cannot be said that Foucault articulates a clear alternative to privacy that would negate modern power.

If Foucault does not formulate a defense of privacy, or explicitly articulate the conditions of this autonomy or individuality, his work seems to be invested in identifying the normative commitments of surveillance. He does not conceptualize a state of freedom from the gaze of the other, independent of the gaze of the prison guard in the Panopticon. My account of how the concept of privacy emerges from the Reformation, and prior to Kant, who Foucault says invented the modern sense of man, shows that privacy is a refusal to involve oneself with a particular group that is yet implicitly bound up with the conditions of surveillance. Responding to the fear of encroaching power by avoiding the surveillant gaze of the other can only fall back on the construction of a self that can only be defined in relation to the other.

Like Van Dijk, Foucault reminds us that surveillance systems are not objective but impose an ideological position that is subject to political contestation. They always serve a particular, if not predefined, aim, whether it be to ensure obedience to God, as in the Reformation, to control human reproduction, as Foucault points out, or to modify consumer behavior, as Zuboff reveals. Today, surveillance systems may monitor the spread of a disease, stop forest fires, regulate poaching, track cyberbullying, inform internet advertisements, maintain prisons, or orchestrate deportations. Foucault would argue that the discourse of privacy diverts

⁷¹ Geroulanos, *Transparency in Postwar France*, 154.

its attention toward protecting the self away from the publicly contestable objectives of surveillance. But, following Foucault's critique of the logic of self-constitution, as well as the centrality of subordination, discipline, hard work, and ingenuity in the formation of the liberal subject, I would add that the critique of surveillance must also articulate a rejection of the theological and liberal conception of the self.

Rejecting the notion of the autonomous self that bears inalienable rights does not simply repudiate its Protestant roots. Instead, it rescues the dimension of Protestant devotion that elevates the ethical obligation of the self to others and rejects the desire not to be concerned with one's fellow man. That said, the critique of surveillance does not depict the self as violated by the other and try to rid itself of the other, as liberalism does, disavowing the primacy of the structural relations with respect to the person in them. My genealogy of privacy has shown how the depiction of surveillance as a violation of privacy, as an external breach of some inviolable realm in the self devoid of the other, limits our politics.

References

- Althusser, Louis. *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses*. Verso Books, 2014.
- Anastaplo, George. "The Public Interest in Privacy: On Becoming and Being Human." *DePaul Law Review* 26, no. 4 (June 1, 1977): 767.
- Arendt, Hannah. *The Human Condition: Second Edition*. University of Chicago Press, 2013.
- Ariès, Philippe, Georges Duby, Antoine Prost, and Gérard Vincent. *A History of Private Life*. Cambridge, Mass.: Belknap Press of Harvard University Press, 1987.
- Betts, Paul. *Within Walls: Private Life in the German Democratic Republic*. OUP Oxford, 2010.
- Bridges, Khiara M. *The Poverty of Privacy Rights*. Stanford University Press, 2017.
- Deleuze, Gilles. "Postscript on the Societies of Control." *October* 59 (1992): 3–7.
- Diffie, Whitfield, and Susan Landau. *Privacy on the Line: The Politics of Wiretapping and Encryption*. MIT Press, 2010.
- Eubanks, Virginia. *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. St. Martin's Publishing Group, 2018.
- Foucault, Michel. *The Foucault Reader*. Pantheon Books, 1984.
- Geroulanos, Stefanos. "Theoscopy: Transparency, Omnipotence, and Modernity." *Political Theologies: Public Religions in a Post-Secular World*, November 2006, 633–51.
- . *Transparency in Postwar France: A Critical History of the Present*. Stanford University Press, 2017.
- Glancy, Dorothy J. "The Invention of the Right to Privacy," 21 Ariz. L. Rev. 1.
- Häggglund, Martin. *This Life: Secular Faith and Spiritual Freedom*. Knopf Doubleday Publishing Group, 2019.
- Harcourt, Bernard E. *Exposed: Desire and Disobedience in the Digital Age*. Harvard University Press, 2015.
- Hartzog, Woodrow. *Privacy's Blueprint: The Battle to Control the Design of New Technologies*. Harvard University Press, 2018.
- Hill, Kashmir. "The Secretive Company That Might End Privacy as We Know It." *The New York Times*, January 18, 2020, sec. Technology.
<https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>.

- Hittinger, Russell. "Charles Taylor, 'Sources of the Self.'" *The Review of Metaphysics* 44, no. 1 (1990): 111–30.
- Igo, Sarah E. *The Known Citizen: A History of Privacy in Modern America*. Harvard University Press, 2018.
- King, Gary, Jennifer Pan, and Margaret E. Roberts. "How Censorship in China Allows Government Criticism but Silences Collective Expression." *American Political Science Review* 107, no. 2 (May 2013): 326–43. <https://doi.org/10.1017/S0003055413000014>.
- MacCabe, Colin, and Holly Yanacek. "Privacy." In *Keywords for Today: A 21st Century Vocabulary*. Oxford University Press, 2018.
- McStay, Andrew. "Privacy." In *The SAGE Encyclopedia of Surveillance, Security, and Privacy*, 795–801. Thousand Oaks: SAGE Publications, Inc., 2018. <https://doi.org/10.4135/9781483359922>.
- Mill, John Stuart. *J. S. Mill: "On Liberty" and Other Writings*. Cambridge University Press, 1989.
- Morozov, Evgeny. "Capitalism's New Clothes." *The Baffler*, February 4, 2019. <https://thebaffler.com/latest/capitalisms-new-clothes-morozov>.
- Nissenbaum, Helen. "A Contextual Approach to Privacy Online." *Daedalus* 140, no. 4 (September 29, 2011): 32–48. https://doi.org/10.1162/DAED_a_00113.
- . *Privacy in Context: Technology, Policy, and the Integrity of Social Life*. Stanford University Press, 2009.
- . "Protecting Privacy in an Information Age: The Problem of Privacy in Public." *Law and Philosophy* 17, no. 5/6 (1998). <https://doi.org/10.2307/3505189>.
- Orlin, Lena Cowen. *Locating Privacy in Tudor London*. OUP Oxford, 2007.
- Osucha, Eden. "The Whiteness of Privacy: Race, Media, Law." *Camera Obscura: Feminism, Culture, and Media Studies* 24, no. 1 (70) (May 1, 2009): 67–107. <https://doi.org/10.1215/02705346-2008-015>.
- Rule, James B. "Contextual Integrity and Its Discontents: A Critique of Helen Nissenbaum's Normative Arguments." *Policy & Internet* 11, no. 3 (2019): 260–79. <https://doi.org/10.1002/poi3.215>.
- Sinfield, Alan. *Faultlines: Cultural Materialism and the Politics of Dissident Reading*. Clarendon Press, 1992.
- Solove, Daniel J. "A Taxonomy of Privacy." *University of Pennsylvania Law Review* 154, no. 3 (January 1, 2006): 477. <https://doi.org/10.2307/40041279>.

- Taylor, Charles. *Sources of the Self: The Making of the Modern Identity*. Cambridge University Press, 1992.
- Van Dijck, José. “Datafication, Dataism and Dataveillance: Big Data between Scientific Paradigm and Ideology.” *Surveillance & Society* 12, no. 2 (2014): 197–208.
- Vincent, David. *Privacy: A Short History*. John Wiley & Sons, 2016.
- Wark, McKenzie. *A Hacker Manifesto*. Harvard University Press, 2009.
- Warren, Samuel D., and Louis D. Brandeis. “The Right to Privacy.” *Harvard Law Review* 4, no. 5 (1890): 193–220. <https://doi.org/10.2307/1321160>.
- Zuboff, Shoshana. “Google as a Fortune Teller: The Secrets of Surveillance Capitalism.” *FAZ.NET*, sec. Feuilleton. Accessed October 10, 2019. <https://www.faz.net/1.4103616>.
- . *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. PublicAffairs, 2019.