



Munich Personal RePEc Archive

# Protecting Privacy Amid Questions OF Economic Efficiency An d Egalitarianism

Baffi, Enrico

Università degli studi Guglielmo marconi

2009

Online at <https://mpra.ub.uni-muenchen.de/38801/>

MPRA Paper No. 38801, posted 15 May 2012 01:15 UTC

# **PROTECTING PRIVACY AMID QUESTIONS OF ECONOMIC EFFICIENCY**

## **AND EGALITARIANISM**

**By**

**Enrico Baffi**

**Università degli Studi Guglielmo Marconi**

**Law School**

### **ABSTRACT**

This paper aims to analyze theories developed both in favor and against privacy protection according to current practices in the West. In the paper, we will examine economic justifications for privacy protection as defined by American economists and jurists, as well as the advantages to be derived by a possible elimination of said protection. Moving beyond existing economic theories, this piece develops a new economic idea, wherein privacy protection is warranted when an individual becomes interested in another's habits for a specific reason: to root out different behaviors in that person by observing a behavior that is correlated with those behaviors.

Imagine the scenario of a worker who is also a soccer player, who is not competitive on the job, and is a team player, when he plays soccer, with his co-workers. The two facts, one of loving his own soccer team, and second, of not being competitive in the workplace are expressions of the same human attitude, or of a certain aspect of his personality. The employer is interested in finding out if this worker plays soccer in order to identify a lack of competitiveness on the job, and perhaps to assign him more menial tasks. The employer wishes to know the worker's interest in soccer in

order to deduce therefrom a second circumstance: non-competitiveness in the workplace.

Thus if regulating others' conduct is not forbidden, the worker, in order not to be found out, will no longer play soccer; he will suffer a loss in terms of his personal welfare, while the employer, on the other hand, will gain nothing, having discovered nothing.

From this comes a different justification for privacy protection. In the paper, however, we note that privacy protection is a tool for encouraging equality or, in pejorative terms, egalitarianism. Behind the privacy "screen," indeed, everyone appears in shades of gray. Privacy protection makes individuals indistinguishable. In terms of inter-personal relationships, this means a "veil" of ignorance, with all its attendant costs. Therefore, it is possible that the economic justifications defined by those in favor of privacy protection should be put aside in favor of transparency among individuals.

## **1. Introduction**

The verb "to discriminate," at its simplest means "to distinguish," although this has a negative connotation insofar as it includes the concept of "to exclude."

When making dinner plans, distinguishing a high-quality restaurant from a not-so-good one involves discriminating against the worse in favor of the better. In the same way, distinguishing among different types of wine necessarily includes a sense of discriminating amongst them. Thus the customer who chooses the better restaurant discriminates against the worse; and the wine connoisseur who chooses the best wine discriminates against the others to the benefit of the former.

Each individual, in his or her daily life, makes discriminations. Tom can choose to spend the afternoon with Dick, discriminating against Harry; on the other hand, Harry might discriminate against Tom by deciding to buy from Dick. Each individual who heads out to do his or her everyday shopping is carrying out a discrimination: in the first place because he or she chooses which commercial establishment to go to; in the second place because among the various merchandise on sale, he or she chooses the item he prefers, discriminating against the rest.<sup>1</sup>

Discrimination is often based on elements existing in different goods, products and persons that make it possible for the person selecting among them to perceive a preference for certain characteristics. He or she who chooses wine of a higher alcohol proof prefers that type of beverage to a lower-proof wine. Or a person who chooses a softer kind of pasta has an exact preference for the type of food that he or she intends to purchase. Where discrimination takes place based on confirmed information having to do with persons or goods, we can speak of “perfect discrimination.”

A different type of discrimination, but just as common, is statistical discrimination.<sup>2</sup> In this case, the person must make a choice between two types of persons or products, calculate the average characteristics of the two categories, and choose the person or service belonging to the category with the better characteristics. Let us imagine that Tom, upon returning home, sees a young Chinese woman on one side of the street, and on the other side a man dressed in dark colors. Given that he is, statistically speaking, more likely to be attacked by a man dressed in black as opposed to by a young Chinese woman, he might opt for the sidewalk where the

---

<sup>1</sup> J. MacIntosh, *Employment Discrimination: An Economic Perspective*, 19 Ottawa L. Rev. 275, 277 (1987),.

<sup>2</sup> E. Phelps., *The Statistical Theory of Racism and Sexism*, 62 Amer. Econ. Rev. 659 (1972).

young Chinese woman is walking. To carry this reasoning a step further, one can say that Tom knows that in 5 % of the cases where a person passes a man dressed in black on the street, he or she is attacked, whereas this occurs only 1 % of the time when passing a young Chinese woman. Thus, the economic calculation leads Tom to head toward the sidewalk on which the young woman is walking. In this way, he minimizes the anticipated damage and maximizes his well-being. Such a discrimination is modified by the adjective “statistic.” In order to explain this adjective, we go back to the man in black. The latter might be the most honest person one could ever meet, and the Chinese woman a dangerous killer, but the calculation of probability holds that a person is more likely to be attacked by a man in black than by a young Chinese woman.

Statistical discrimination is not based on the person or the good's ascertained characteristics, but rather considers the average characteristics of the category to which these goods or persons belong. In this way it can be distinguished from perfect discrimination.

Statistical discrimination is efficient on a private basis,<sup>3</sup> in the sense that the subject using it maximizes his or her personal wellbeing. A different matter, and one to be looked into, is the theme of social desirability of statistical discrimination.

Here we might note that many people make use of statistical discrimination. When, for example, we choose a restaurant because it appears cleaner and more attractive, we carry out a statistical discrimination. It is quite likely that a restaurant with a worse appearance might actually be better and cleaner; however, statistically speaking, it is likelier that the first restaurant is better than the second. As a further example, imagine the person who is about to make a purchase: he or she lets himself or herself be enticed by a product packaging that appears to be well

---

<sup>3</sup> E. Phelps, *work cited*, p.659.

thought-out, thus he or she chooses that product because he or she believes there to have been particular care in the product's preparation. In that case, the person carries out a statistical discrimination, for it is quite possible that a product with a worse appearance actually be higher in quality, but what the purchaser knows is that it is more likely – although not 100 % certain – that the selected product with the more polished packaging is higher in quality.

That which might conflict with the sense of equity among individuals lies in the fact that a higher-quality good is discriminated against, or that an absolutely morally upright person is discriminated against in the moment the passerby crosses to the other sidewalk.

Discrimination is based on different types of data. First, “indices” and “signs” are taken into consideration.<sup>4</sup> The “indices” are represented by those characteristics of the persons or things that cannot be modified (except at an almost prohibitively high costs) – such as the color of a person's skin, their race, age or sex.

Signs, on the other hand, are those behaviors that involve a certain cost in order to be put into action, and which cannot be “mimed” by individuals with different characteristics. The most important signs are represented by upbringing, style of dress, driving style...

To counter discrimination based on such indices, there is a complex legal discipline known as “anti discrimination.” A general characteristic of the indices is that there are easily visible to the observer's eye. However, “anti-discrimination” regulations are not limited to prohibiting discrimination based on the indices. What

---

<sup>4</sup> M. Spence, MARKET SIGNALING: INFORMATIONAL TRANSFER IN HIRING AND RELATED SCREENING PROCESS, Harvard University Press, Cambridge (Mass.), 1974, p. 10: Spence thus defines the indices and signs: the former are observable characteristics which cannot be altered; the latter are observable and alterable characteristics.

characterizes this policy is the fact that, even if the individual should decide to display his or her characteristics (which are not indices and which would not otherwise be visible – such as his or her religious beliefs), he or she cannot, in certain contexts, be discriminated against.

On the other hand, privacy policies exist to counter discrimination that involve elements that might be kept secret and which the subject wishes to keep secret. Thus, for example, a person might keep secret the results of certain medical exams, their G.P.A., their salary. In terms of privacy policies, regulations do not have the goal to produce the effect that someone displaying his or her characteristics not be discriminated against, but rather enfranchise the individual with the right to keep certain information secret.

With this, at any rate, we do not necessarily mean to state that the protection of personal privacy has the sole aim of eliminating discrimination, but rather we wish to indicate that this is one effect that it surely produces.

Finally, we must consider discrimination based on signs. Even if anti-discrimination policies handle this issue only tangentially, it may be the object of policies governing privacy.

## **2. Safeguarding Privacy and Equality**

The active subject, who intends to maximize his or her own wellbeing, tries to use all of the information he or she can source to carry out either a statistical or a perfect discrimination. Privacy and anti-discrimination policies regulations prevent him or her from doing so. What effects do such provisions produce? The legal provisions here considered immediately produce a certain effect: the individuals are treated more equally. In the absence of discrimination based on medical-test results, the ill person will be treated in the same way as the healthy individual; without the possibility of discrimination based on national origin, the Spaniard will be treated

the same as the American. Such behaviors are inefficient on a private level if, as we have seen, the individual who acts on the basis of his own interests carries out statistical and perfect discriminations. Anti-discrimination policies do not push the envelope too much: someone buying a can of tomatoes can certainly not be forced to choose at random in order to avoid a discrimination considered undesirable. The same goes for the man walking down the street – he cannot be forbidden from choosing the sidewalk he prefers.

One might say that behind the privacy “screen” all individuals are in a gray area. In this sense, privacy policies lead down an American-style path towards egalitarianism.

With privacy protection comes a wall behind which individuals' behaviors and data are hidden, making everyone more equal. Without the possibility of seeing two laborers' respective paychecks, one would tend not to consider this element in selecting one's best friend – one might even presume the two salaries to be equivalent. From this point of view, privacy regulations encourage egalitarianism. To this is added the influence of anti-discrimination policies which impede discrimination based predominately on indices. The result is a social situation in which equality among individuals is greatly increased, albeit at the cost of decreased efficiency. The latter requires, after all, the greatest amount of information possible, so that the exchanges among the associated persons might have the greatest value.

### **3. Economic Justification of Privacy Protection**

Discrimination, furthermore, has a negative connotation. Consider this case: employers wrongly believe women less capable of intellectual work than men; from this follows that men will be hired for higher-level positions, while women will be hired for entry-level positions. What effect will such conduct produce? A first effect will be that women will not apply themselves particularly in acquiring intellectual capabilities – by studying, for example – because they know that they will be



discriminated against anyway. Thus follows that women's supposed level of ability will actually be confirmed. This will make for a (false) self-fulfilling prophecy. If no woman applies herself to bettering her acuity because she knows that she will be discriminated against anyway, women's general intellectual level will remain low, and the employers' prophecy will be confirmed.<sup>5</sup>

There are writers who are steadfastly opposed to privacy protection, even in the presence of the aforementioned considerations. Richard Posner<sup>6</sup> compared the subject who hides personal information to the salesperson who does not reveal his or her products' defects.<sup>7</sup> The consequences of the salesperson who hides certain negative information might be generically identified in the loss of value in the exchange. If a subject would value a certain product "10" where there was full disclosure, they might value "6" if there was potentially hidden information. There will therefore be a loss of value. And this because the item might not work for the purchaser, it might command a lower price if resold, or it might need to be used more gingerly since it might be defective, and so on and so forth. The same rationale must be applied to social interactions: if some information may be kept

---

<sup>5</sup> K. Arrow, *Some Models of Job Discrimination* in A. H. Pascal, ed. RACIAL DISCRIMINATION IN ECONOMIC LIFE, Lexington Books, Lexington (Mass.), 1972 and "The Theory of Discrimination," in O. Aschenfelter and A. Rees eds, DISCRIMINATION IN LABOR MARKETS, Princeton University Press, Princeton, 1973.

<sup>6</sup> R. Posner, entry: *Privacy*, in THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW, Peter Newman ed., London (1998), vol.III, pp. 103-108. These unusual ideas on the protection of privacy were clearly laid out by Posner in an article entitled "The Economics of Privacy," 71 American Economic Review Papers and Proceedings 405 (May 1981). Many ideas of Posner about privacy were, furthermore, already present in the article entitled "The Right to Privacy," published in 12 Georgia L. Rev. 393 (1978).

<sup>7</sup> A very good introduction of the economics of privacy is in K. Scheppele, LEGAL SECRETS: EQUALITY AND EFFICIENCY IN THE COMMON LAW, The University of Chicago Press, Chicago, 1988, pp. 24-42.

secret, the value of the relationship decreases. This stems from not being able to trust the person completely, to confide in them openly, to have to be on one's guard around them, etc. Just as newspapers publish the defects of commercial products, so too, according to Posner, individuals must make their defects known.

In his work,<sup>8</sup> Posner cites the example of a lady who in her youth had worked as a prostitute, and who subsequently had been implicated in a murder. Following those events, she had begun a normal life, had married, and had joined a local church – in short, she had become a respectable person. It so happened that, later, a movie depicted the murder, and thus brought this woman's story back to the public eye. This lady sued for damages sustained from the invasion of her privacy and won. For Posner, the verdict was a mistake.<sup>9</sup> Those who hide their personal facts attempt to create a falsely positive reputation by tricking others. Moreover, a good reputation is capital that facilitates social and commercial exchanges; it cannot be effectively built up if there is a doubt that someone might be hiding something.

In response to the objection that individuals revealing their own negative business might be ostracized, Posner points out that individuals – who tend to maximize their welfare – know how to assess the importance of a certain fact, or to evaluate whether the person has indeed changed over time. If the person has, in fact, returned to a normal life, and if they have qualities that would enrich the other person's life, who would lose out in such a social exchange?

All the same, it has been held that the freedom of gathering and transmitting information on others might have notably distorted effects. Imagine being

---

<sup>8</sup> R. Posner, entry: *Privacy*, cited, p. 106. The more widely disseminated understanding of Posner's ideas on the right to privacy are expressed in *THE ECONOMICS OF JUSTICE*, 231-347, Harvard University Press, Cambridge (Mass.), 1981

<sup>9</sup> The case is known as *Melvin vs. Reid*, 297 P 91 (Cal. 1931).

photographed while at home. In order to hide what happens inside, individuals would have to resort to purchasing drapes or might even forgo windows entirely. Or think of all those mini-behaviors that one might require to maintain different information secret, such as hiding one's paycheck, or keeping health information secret, etc.<sup>10</sup>

One might say that such behaviors are perfectly futile, given that in these circumstances the “unraveling result” would be set off, that is, the principle of complete disclosure.<sup>11</sup> According to this principle, individuals with better qualities would hide nothing, in order not to be confused with lower-quality individuals. Once the better are disclosed, those in the second category now find themselves in the new position of subjects with the better qualities. The latter, no longer able to be confused with those belonging to the initial “better” category, and now running the risk of being mistaken for the worse individuals, will declare themselves as well. Thus for the initial third category, and at the end of the process, all the individuals will disclose information (except, maybe for those in the worst category, but it is a moot point, because from their not revealing themselves one would be able to deduce that they belong to the “worst” category since all of the other categories have already been disclosed and they can no longer be confused with these).

That said, there is an objection to this sort of reasoning that the same Posner offers: information that an individual tends to hide are not only ones considered “discrediting,” but also “embarrassing” ones, even if devoid of any discrediting element. Imagine a man who does not want to be seen through a window while

---

<sup>10</sup> R. Murphy, *Property Rights in Personal Information: An Economic Defence of Privacy*, 84 Geo. L.J. 2381 (1996).

<sup>11</sup> R. Gertner, entry: “*Disclosure and Unravelling*,” IN THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW, cit., vol. I, pp. 605-608.

using the bathroom. In this case, there is nothing discrediting – he cannot fool others regarding his age, physical condition, or the natural, human function – and yet he is embarrassed to be seen through the window.

The fact that information kept secret might be either discrediting or embarrassing prevents the mechanism of disclosure from entirely work: a certain category of persons might hide information that pertains to them not because these belong to a “worse” category, but rather because they would be embarrassed to reveal certain information. There would then be a social cost borne by individuals to refrain from disclosing embarrassing information.

We have already highlighted, in fact, that a possible justification for anti-discrimination and privacy-protection regulations (we can, at this point in the study, consider them together) lies in keeping false prophecies from being fulfilled.

We can therefore also identify new economically-based justifications for the protection of privacy. It is critical to bear in mind that some behaviors form the subject of interest on the part of other associates because, in general, they are correlated to other behaviors or aspects of one's personality: think, for example, of the case of the faithful individual who attends his or her own church, and imagine that the followers of that religion have a scarce inclination for competitiveness. A businessperson, interested in highly competitive workers, might want to know those persons who take part in religious services, in order to discriminate those belonging to a faith that is not associated with competitiveness. It is the problem of correlation that I intend to underscore. A behavior is correlated with a different behavior in which a third party is interested because of that same attitude that leads them to perform them. He or she knows that the former behaviors would indicate obtaining the latter, in order to carry out a choice (a discrimination). We must ask ourselves what would happen if the behaviors in which they are only indirectly

interested might be protected by the right to privacy. Imagine if an employer tried to find out those who attend a certain church. As a consequence, the individuals who attend the church would give up doing so in order not to be fired, at the price of the loss of wellbeing due to not taking part in the religious events anymore. But what counts more is that the employer will not gain new information, for those who do not participate in the religious services will still maintain the non-competitive attitude. The employer will not gain any advantage, while the workers who give up the religious ceremony will lose an element of personal wellbeing. Such inefficiency may be handled by protecting, along with the right to privacy, the right to participate in religious ceremonies.

The lack of a cause-effect relationship is also illustrated by another example: Tom plays ball every day, and this behavior of his is grounded on a certain “esprit de corps.” The same behavior leads him at work not to disclose the names of less productive individuals. If the employer begins to investigate those who play soccer, these persons might quit playing, but that team spirit would not change, so they would still be reluctant to identify their less productive co-workers.

It would be a different matter if there were a cause-effect relationship between the two behaviors. Imagine a worker who spends his or her evenings at the bar, drinking excessively. The next day, because of the alcohol he or she has in his or her body, the worker might not be as productive as he or she might have been, perhaps because of inattentiveness while carrying out his or her tasks and operations. In this case, the employer's interest might have beneficial effects in terms of welfare: the worker, in order to avoid being fired, gives up going to the bar and getting drunk, with a beneficial effect on his or her productivity at work. In case the worker still decides to continue to go to the bar, he or she will be replaced by a more careful worker. The worker loses something (job and salary), but not so much to make him or her give up

drinking at the bar, while the employer increases staff productivity. The net effect might well be positive.

Another economic justification for protecting privacy can be perceived in the need to avoid “over-signaling.” This phenomenon appears when the associated persons spend a great deal in the attempt to show their own qualities to a counterpart, but to no avail.<sup>12</sup> Just consider the hypothesis of workers who, in the attempt to show off their attributes, invest in higher education. Higher education may be seen as means of acquiring knowledge, but also as a tool to broadcast one's abilities (those who succeed in college present certain attributes). Now imagine that everyone succeeds in their studies. In this case, earning a diploma or a degree gives no information to the employer, while the activity of “signaling” has turned out to be expensive for those seeking employment. One could say that in this case no one would have the incentive to tackle a degree program because it would not transmit any information. But then, those not earning a degree would be considered individuals potentially incapable of earning one, and thus would be discriminated against. In these cases, a restriction on the disclosure of degrees and other educational certificates would increase social welfare. But one must not forget that the hypothesis appears rather targeted.

More clearly, one can maintain that educational level can be determined in a variety of degrees, insofar that even lower levels of education are able to create a “separating equilibrium,” that is, to operate as signs. Individuals are rather led to obtain what is required by employers, who move according to a certain bias, and

---

12 B. Hermalin and P. Aghion “*Legal Restrictions on Private Contracts Can Enhance Efficiency*,” 6 J. Law, Econ. Organ. 381 (1990).

obtain a level of education, possibly excessively high, in order to have the “separating equilibrium,” and thereby wasting educational resources.<sup>13</sup>

Finally, there is a justification for privacy policies laid out by the authoritative scholar Charles Fried<sup>14</sup> which, although he himself would probably never define it “economic,” still makes references to concepts that might be considered pertinent to economics. Fried writes that<sup>15</sup> “it is my thesis that privacy (...) is necessarily related to ends and relations of the most fundamental sort: respect, love, friendship and trust. (...) Without privacy, these relationships are simply inconceivable. They require a context of privacy or the possibility of privacy for their existence.” But what exactly is privacy, according to Fried? He asserts that <sup>16</sup> “as a first approximation, privacy seems to be related to secrecy, to limiting the knowledge of others about oneself (...) Privacy is not simply an absence of information about us in the minds of others, rather it is the *control* that we have over information about ourselves.” Here the problem arises of understanding Fried's thinking: why should privacy, which is the control of information that concerns us personally, be necessary to build relationships based on love, friendship and trust? The explanation lies in the fact that an individual deepens a relationship with another by conveying secret information about himself. The person in love confides his or her personal business

---

13<sup>□</sup> M. Spence, *work cited*, p. 20. Imagine two classes of workers, the good ones and the distracted ones. By requiring a Bachelor's degree, one is able to separate the good from the distracted because the latter are not able to earn a degree. All the same, employers believe that in order to separate the good from the distracted, a Master's is required. In this case, those who are distracted would be even less likely to obtain the degree, while the good workers, in sacrificing more, will earn a Master's. In this hypothesis, there was something wasted, since with the Bachelor's degree alone a “separating equilibrium” would have been reached.

14<sup>□</sup> C. Fried, *Privacy*, 77 Yale L. J. 475 (1968).

15<sup>□</sup> C. Fried, *work cited*, p. 477.

16<sup>□</sup> C. Fried, *work cited*, p. 482.

in their boyfriend or girlfriend, who opens up to a friend – these actions simply render social relationships more stable, engendering wellbeing for the individuals. For this reason, Fried's theory can be considered “economic,” insofar as it aims at guaranteeing the building of relationships that increase persons' wellbeing, and help boost a community's overall welfare. One might well note that Fried's theory can hardly be reconciled with Posner's.

#### **4. The forms of privacy protection**

A first way of privacy protection involves forbidding the interested person to solicit information on the individual's characteristics with the intent to promote or to discriminate. Thus, one might forbid employers to request HIV-test results, in order to avoid that infected individuals be discriminated against. Posner would hold that hiding a fact of that sort would be a fraud like those of salespersons who conceal information regarding their products' defects. In any case, if we stipulate that some of the aforementioned economic justifications might be valid, one might underline that it is desirable for an employer not to request such information. This kind of protection is not sufficient to guarantee the privacy of the associates. Here the principle of disclosure is also germane. Indeed, how would those individuals who are HIV-negative react? If they are selfish and rational, with no feelings of empathy or antipathy towards the other associates, they would unsolicitedly show the test in order to be favored over the ill persons. Those who are not infected by the virus would disclose themselves. Left behind would be those who do not intend to declare themselves. Here, there begins to be a certain amount of doubt in terms of what might be inferred by such practice. The employer might infer that those not declaring themselves might be hiding a negative, discrediting information – that of being HIV positive. There might also be the possibility that someone might consider information on their personal health embarrassing, and would therefore not disclose the information for these reasons, even if the test were negative. In any case, it is



privately efficient for the employer to prefer those who disclose themselves since among these the probability of the virus being present is zero, while among the others it is unknown, and could therefore well be positive (imagine, furthermore, a regulation punishing the submission of false information; otherwise all the affected individuals would present a fake test showing them to be HIV -negative).

The same would happen if one were to prohibit the employer from asking for potential candidates' G.P.A.s. Here, too, the principle of complete communication would also hold true. Those who have, in fact, a higher average (4.0, for example), would instinctively communicate their G.P.A. to their employer in order not to be confused with those with a lower average. At this point, those who earned a 3.99 would have the incentive to communicate their G.P.A., since they can no longer be mistaken for those with a 4.0, since they have already been revealed, but they only risk being lumped in with those having lower G.P.A.s. To halt this “unraveling” mechanism, there must be a law not only to forbid the employer to ask for the result earned, but also to keep the prospective employee from unsolicitedly communicating their own result.

An appropriate safeguarding of the privacy calls not only for the interested subject to be obliged not to solicit information, but also for the other individual to be required not to provide the same information in an unsolicited manner.

## **5. Conclusion**

A convincing justification for protecting privacy has, perhaps, not been found. It is possible that individuals might simply have a “taste for privacy,” that is, an innate

preference for privacy, developed evolutionarily<sup>17</sup> and therefore arguments of an economic (consequentialist) nature, would not be able to grasp the needs underlying such protection. Theories supporting the view that privacy regulations may support the genesis of commercial and social relationships are opposed by the view that privacy destroys such relationships because all economic and social exchanges would take place with the suspicion that there might be some hidden negative information. A clear principle is certainly not easy to ascertain. Fried's opinions cannot easily be reconciled with Posner's.<sup>18</sup> The more convincing idea in favor of privacy protection would entail a lack of protection: higher expenses to hide oneself from others, greater circumspection in how one deals with others and, most of all, forgoing behaviors that might reveal an attitude that spawns certain behaviors. If the person who is a political activist in a party characterized by anti-business positions is considered pejoratively in his or her workplace, because he or she has might be deemed by the employer not sharing the goals of the firm, then that person, if it is permissible to observe him or her, would give up political activism, but the aptitude to be anti-business would not be eliminated, rather it would continue to hold true. In this way, the individual who wishes to be a political activist, in effect, loses something – the chance to make politics – while the employer would gain nothing because he or she would no longer be able to identify persons with such attitudes, and would no longer be able to discriminate among employees.

There remains a not indifferent element having to do with privacy protection: privacy favors equality among individuals, hiding them behind a screen that makes them more similar amongst themselves.

---

<sup>17</sup> J. Hirshleifer, *Privacy: Its Origin, Function and Future*, 9 J. Legal Stud. 649 (1980), pp.651-652.

<sup>18</sup> Fried, in one situation, acknowledged the possibility that Posner's ideas might be valid. C. Fried, *Privacy, Economics and Ethics: A comment on Posner*, 12 GA L. Rev. 423 (1978), p.423.

Whereas the Liberal bourgeoisie of two centuries ago felt the need for privacy in order to be left alone (but in Posner's view one would need to say: in order to carry out acts that one would not wish to render public because they are discrediting), today privacy is perhaps felt more as a tool for not being discriminated against by, or better yet distinguished from, other persons. Anti-discrimination and privacy regulations thus see their functions merging. All of this might have a cost in terms of economic efficiency, which might exceed the benefit indicated above regarding the possibility of living according to one's own prerogatives.

In terms of the forms of privacy protection, we have seen how difficult these are to handle, given the “unraveling result” or the principle of perfect communication. There would need to be an obligation on the part of the interested subject not to reveal information, but this result would seem complicated to reach because such exchanges of information might well happen in “secret.” A greater development of these legal concepts is needed if one wishes to guarantee an effective safeguarding of privacy.