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**Privatization, Information Technology and Privacy:  
Reconsidering the Social Responsibilities of Organizations**

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**1. Introduction**

In many Western European countries, during the last decades, there has been a tendency to rearrange the borders between public and private institutions. So, for instance, certain types of social insurance that originally fell under the responsibility of the government and were administered by public organisations, have been partially or even completely privatised. Partial or complete privatization of such institutions mostly happens in order to raise their efficiency and to reduce collective burdens and public expenditures. At the same time, there have been important developments in information technology, such as (a further facilitation of) computer - matching and - profiling and knowledge discovery in databases, which can be used by the newly privatized organisations for marketing and sales purposes. The convergence of these two tendencies can create significant social problems, where the organizations at stake dispose of detailed personal information of rather delicate character concerning their clients. These problems, however, may for different reasons easily escape the attention. In this paper, I will show by means of an example, that the use of certain options in information technology, such as the production and application of group profiles by private or partially private organizations may create relatively new social problems, which cannot yet be adequately captured in terms of the current legal and moral vocabularies. At the same time these problems, as to their true character and origin, are apt to remain unknown to potential customers of these organizations and the general public. I will contend that the possibility of such problems arising calls for innovations of the moral and legal conceptual framework currently used regarding the protection of personal data and challenges a classical stance in the debate on the social responsibilities of business organizations.

The example, which I will present, is taken from the recently reorganized health-insurance system in the Netherlands. Although the institutional organization of health care financing systems in other countries differs in

many respects from the one, presently established in the Netherlands, analogies are undoubtedly in some way or other at stake in many other countries. It should also be noticed beforehand that problems like the ones to which I will draw attention may occasionally (but then probably in a milder, less salient form) arise in other contexts than those of completely or partially privatized insurances. One may think, for instance, of the social impact of the use of consumption, income or credit rating profiles in commercial trade or in credit institutions.

## **2. Group profiles containing delicate information**

In the Netherlands, about 60% of the population is insured against the costs of health care through a social, i.e. non-private, insurance system. This insurance covers a wide range of basic provisions. It does not, for instance, cover certain kinds of medically induced transport, physiotherapy and dentistry. The other 40% of the population has private health insurance. Until recently, the social health insurance had an open-ended financing system, meaning that increases in costs were annually compensated by raises in the premium rate. The premiums paid by the insured individuals used to be proportional to their income. In order to raise efficiency and to rationalize this social health insurance system, the Dutch government decided some years ago that the organizations administering the system should, by a piecemeal process, be brought into line with the private health-insurance companies. As a matter of fact, this initiative comes down to a partial privatization of the social health insurance. The first steps in this process have already been taken. The complete open-ended financing system has been abandoned. The executive organizations have by now become at least partially risk-bearing themselves. Also, about 15% of the total premium rate per insured individual is no longer income dependent, but fixed. And, what for our purposes is even more important, the executive organizations were allowed to compete with each other and to ally with or to found themselves private companies, offering private supplementary health insurance, private standard health insurance and even life- and disability insurance. As to this, two things should be noticed. Firstly, the private companies in the field of health insurance with which the executive organizations allied or which they founded, are organizations which are *from a purely legal point of view* independent from the executive organizations themselves. This means that, on paper, they are different entities, falling under different legal regimes. *Substantially*, however, they are largely the same. By this I mean, that most employees - and this surely holds true for the board of directors and for the administrative staff - in fact work for both the executive organization of the social health insurance and for the purely private insurance companies. Probably as a consequence of this, the employees of the organization which in fact embodies different

insurance companies, do not think of themselves as employees working for essentially different organizations.

Secondly, each organization embodying such an executive organization and other private insurance companies, presents itself to the public as being one organization. For this reason, the public is often not aware of the fact that it is dealing with different organizations which each - in fact - a different mission or reason of existence.

Of course, the piecemeal transformation of the institutions originally founded on an ideal of group solidarity into companies oriented towards the mechanisms of the free market caused problems for the staffs of the executive organizations. Nevertheless, they have done their best to adapt themselves to their new condition. In this process of readjustment they discovered amongst others that hidden in their files they had very useful detailed information about all kinds of interesting aspects of approximately 60% of the Dutch population. For the purpose of fulfilling their tasks as executive organizations, they dispose of several registration systems. Among these are systems that contain data concerning the name, address, date and place of birth, sex, number of children as well as their age, and an indication of the income of the insured individuals. Others contain data concerning the (kind of) employer of the insured person or the governmental organization which provides his or her social security. Still others contain data concerning the specific medical provisions supplied to the insured person. Now, needless to say, this treasure of information can be made extremely useful for marketing and sales purposes. Of course, the information cannot be used straight away. Existing privacy laws and regulations forbid the use of such information as long as it contains indications of identifiable persons. There is, however, another way of making the information useful. On the basis of the information stored in the different registration systems, by matching and other computer operations, statistical processing and combination and enrichment with information from other sources, profiles can be produced containing information about significant aspects of *reference groups*, instead of individual persons, as information subjects. The reference groups may be defined by a certain postal code, streetname, employer, level of income, number of children, age etc., or a combination of such characteristics. The profiles attached to the reference groups can contain all kinds of information, e.g. concerning income, number of children, and (deduced from the specific kinds of health care provided to the insured persons), for our purposes most importantly: information concerning state of health and health prospects. The information, thus generated, can be used for different purposes, and the following list is not meant to be exhaustive. I must hasten to add, however, that as a matter of fact, options 3 and 4, as far as I know, have not yet in fact been realized.

- 1) The information may be used to make the set of provisions covered by the insurance fit the expected medical needs and preferences of the insured persons, and to fix a balanced premium rate.

2) The information may be used for indirect selection of candidates, in particular for the completely private insurance schemes which the company offers. So, for instance, it enables the insurer to approach - e.g. by mailings addressed to "the residents of this street" - certain groups of people with relatively good health prospects with attractive offers regarding health-, life- or disability-insurance.

3) The information may be used to directly refuse applicants for types of insurance to which no duty of acceptance applies, e.g. by refusing candidates without specification of reasons, but in fact on the basis of, for instance, their having a certain postal code which through profiling is known to refer to a group of residents with relatively poor health prospects. In the Netherlands, a duty of acceptance applies to both social and private health insurance, insofar as both the executive organizations and private health insurance companies must accept a candidate for a special kind of elementary health insurance. To this specific kind of insurance, however, higher premium rates are attached than to the normal types of health insurance. The duty of acceptance does not apply to the various types of supplementary insurance for non-elementary healthcare provisions. Neither does it apply to life- and disability insurance.

4) The information may be sold to other institutions, e.g. research institutes, other insurance companies, commercial medical services or employers.

As soon as one becomes familiar with these options, one may intuitively grasp that they are in some way problematic. The precise reason, why they are problematic, however, is difficult to explain. Let me elaborate this point.

### **3. Updating moral and legal vocabularies**

An important aspect of the profiles at stake is that the information contained in them, although originally obtained from particular individuals, has in fact become anonymous. The information subject of such a profile is always a collectivity, a certain reference *group*. This group is defined by a property or a set of properties, which from the perspective of the members of the group are mostly arbitrarily chosen. From the perspective of the maker of the profile, of course, the properties are consciously chosen. They enable him to distinguish the group from others and to compare it with others for his own purposes. Now, the profiles which attribute additional information to the reference group, will almost always contain what we may call non-distributive collective properties or characterizations. To illustrate, one may think of properties like:

- exhibiting a relatively high chance of being infected with HIV, or
- exhibiting a relatively high proportion of adults employed in petrochemical industry, or
- exhibiting a proportion of 10% using sedatives

These properties are expressed in terms of chances, risks, proportions etc. They are based on statistical processing of data about members of the reference group at stake and on comparisons of this group with other reference groups. Such properties can be truly predicated of the information subject, i.e. the reference group as such. At the same time, they tell us something about the individual members of that group, *as members of that group*. Nevertheless, they do not inform us specifically about these individuals, were they not accidentally belonging to this group.

Now, once again, it may be asked: what exactly is the moral problem with all this? In trying to answer this question, one might, first of all, object to some of the *applications* of the information, for instance to the application for purposes of selection of candidates for insurance. One might call upon the ideal of fair equality of opportunities for all to obtain an appropriate share of the assets and provisions which can be aggregated, arranged and distributed in a society. One might try to make clear that the refusal of candidates for a certain insurance scheme on the basis of their accidentally belonging to a group with a significant health risk runs counter to this ideal. Formulating the problem in terms of this ideal certainly captures some features of it. Rather interesting, though, is the fact that the ideal of fair equality of opportunities is mostly invoked where a criterion of selection is based on in- or non-voluntarily acquired traits of individuals: for instance, colour of skin, sex, and (in most cases) state of health and health prospects. The non-distributive collective properties contained in group profiles, however, are properties, on the basis of which persons are judged and treated, which these persons not only have acquired non-voluntarily but which, in a way, they do not even exhibit in reality.

Apart from possible objections against certain well defined applications for selection, therefore, one might also feel that there is something wrong with generating the profiles in the first place and with the sheer possibility that the information in them may be proliferated and used for whatever purpose. This is where one might be tempted to call upon the value of privacy, since the information in the profiles is ultimately derived from aspects of individuals, e.g. their income, number of children and health state and health prospects, and such information is commonly and conventionally held to be delicate, worthy of protection, and in principle only to be divulged if the individual freely so chooses.

There is a problem, however, with the application of the privacy-vocabulary, due to a particularity of the conceptions of individual privacy, as they are currently used by ethicists and legalists. As far as informational privacy

is concerned do current privacy conceptions not only presuppose that the information at stake *originally* contains data about states of affairs or aspects related to (i.e. accompanied by indicators of) individual persons; they also assume that the information even after processing *continues* to contain data about states of affairs relating to individual natural persons. These assumptions are mostly implicitly present in theoretical contributions on the subject of privacy in ethics (Rachels, 1975, Parent, 1983; Johnson, 1989a, 1989b, 1992). They are most clearly present, however, in privacy laws and regulations. The highly influential European Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46/EC of the European Parliament and of the Council of Europe of 24 October 1995), for instance, defines personal data as ‘any information relating to an identified or identifiable individual’. With regard to the processing of personal data, the Directive poses some basic principles. Personal data, for instance, should be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected. The data subject are given some specific rights with regard to ‘his or her’ personal data. Among these rights are a right of access, a right of rectification, a right to know to whom the data has been disclosed and a right to object to the processing of data relating to the data subject. All these requirements take the definition of personal data as data relating to identifiable individual persons as their starting point. They do not only presuppose that the data which are processed, are personal data at the beginning of the processing; they also assume that the data remain personal data in all the stages of the processing as well as in the result of the processing. For that reason, they make sense as long as the data can be related to identifiers of individual persons. Once, the data are aggregated, anonymized and further processed, however, they lose their meaning.

Now, as the use of the current notion of individual privacy appears to be problematic, one might think that we would perhaps be better off with a notion of collective privacy. However, I do not think that collective privacy will do the job properly. Such a notion reminds of collective rights. The subjects of collective rights are groups or communities. In order to make sense of the idea of collective rights, these subjects are often treated as beings analogous to moral persons or moral agents, or at least as collectivities having certain characteristics similar to character traits which cannot ultimately be derived from the input of the individual members. Furthermore, they are often thought to be structured or organized in some way, so as to be able to exercise their rights or let their rights be advocated by vicarious agents (Hartney, 1991). All of this is out of the question as regards the reference groups of the profiles which are at stake, here. The members of the groups will mostly not be aware of the fact that they belong to these groups. The groups are, from the perspective of their members, arbitrarily defined. Their members do not

have any special ties of loyalty towards each other. They do not dispose of organizational structures either. Therefore, they are not capable of taking decisions or acting in their quality of collectivities.

To sum up: although the problems coming along with the production and application of group profiles would probably best be described in terms of privacy, neither the currently used conceptions of individual privacy, nor a possible conception of collective or group privacy are really fit to capture them adequately. In order to redress the deficiencies of these conceptions qua analytical and distinctive evaluative potential, I therefore propose to extend our privacy-vocabulary for the time being with the neologism of categorial privacy. Categorial privacy can be considered as relating to information (1) which was originally taken from the personal sphere of individuals, but which, after aggregation and processing according to statistical methods, is no longer accompanied by identifiers indicating individual natural persons, but, instead, by identifiers of groups of persons, and (2) which, when attached to identifiers of groups and when disclosed, is apt to cause the same kind of negative consequences to the members of those groups as it would for an individual person if the information were accompanied by identifiers of that individual.

Of course the second part of the stipulation is brought to the fore because the information at stake is often used in judging and treating individuals *as if it were*, strictly speaking, personal information: the individual is judged and treated on the basis of properties of his “virtual” counterpart, a group to which he accidentally belongs. Categorial privacy can be considered to be conceptually closely connected to individual privacy, because the values, which oppose infringements of individual privacy, such as autonomy in self-presentation, individuality and certain social interests (Benn, 1988: 264-280; Fried, 1971: 137-154; Johnson, 1989a, 1989b, 1992; Rachels, 1975) equally oppose infringements of categorial privacy. Unlike group privacy, categorial privacy has its point in respecting and protecting the individual, rather than the group to which the individual belongs. Furthermore, the notion of categorial privacy, just like current conceptions of individual privacy, builds on a conventionally predefined conception of information concerning the personal sphere (Johnson, 1992, Scanlon, 1975). Categorial privacy, however, would be different from its individual counterpart, in that it draws attention to the attribution of certain properties to groups, instead of individuals, which, nevertheless, can result in the same effects as the attribution of particular properties to individuals. In this respect, infringements on categorial privacy come close to stereotyping and wrongful discrimination on the basis of stereotypes (See Harvey, 1990). Finally, it should be noticed that infringements on categorial privacy cannot be avoided in a way similar to infringements on individual privacy. Regarding individual privacy, it is commonly held that potentially privacy-invading actions performed with the consent of the individual involved do



not constitute infringements on this individual's privacy, in a way presupposed by the legal device "volenti non fit iniuriam". The application of this principle of consent to would-be infringements on categorial privacy is unacceptable for obvious reasons. Firstly, as was explained above, a reference group, because of its lack of organizational structure and mutual social ties, will only rarely be able to reach and to enact collective decisions. Secondly, if one were to turn from the group as such to the individual members of the group, then the individual's possibility of refusing to have his or her personal data processed for the production of a group profile can be harmful to other members of his reference group as well as to the one who actually refuses, when the profile nevertheless is produced. Actual refusal will reduce the reliability of the profile, whereas, nevertheless, all members of the reference group, including the individual who has opted out, may be judged and treated on the basis of just this profile with reduced reliability.

#### **4. Reconsidering the social responsibilities of private organizations**

I have dwelled extensively on the difficulties of capturing the moral problems coming along with the production and application of group profiles containing delicate information in terms of our traditional or current moral and legal vocabularies. The aim of this extensive treatment was to make clear, that due to the limitations of our current moral and legal conceptual frameworks regarding the protection of personal data, these problems may be easily overlooked. In order to keep in pace with the rapid developments in information technology, therefore, an updating of these frameworks is desirable.

There is, however, another interesting feature to these problems, i.e., the fact that their true character and source will be hard to discover by those who are affected by them. By this, I mean that the general public or potential consumers are not in a position to see or point to possible morally problematic aspects of this kind of profiling, because they simply do not know about it. Often they will not know that the information which they or for instance their doctors, pharmacies and hospitals, forward to the insurance companies in order to get their bills paid, will or can be used for the production of group profiles. If they know, it will be hard for them to understand the specific impact which the production and use of the profiles might have on them. They will for instance have great difficulties in tracing the exact correlation or connection between their being treated in a certain way and their belonging to a particular group. In short: when they are affected by the use of group profiles, they will experience the consequences, but they will often not be aware of what exactly causes these phenomena.

It is this feature which exactly challenges an ever recurring classical stance in the ongoing debate on the social responsibilities of private organizations in the aftermath of Milton Friedman's provocative claim that business companies have just one responsibility towards society, namely the responsibility to contribute to its welfare by producing goods and services and selling these for a profit, while conforming "to the basic rules of the society, both those embodied in the law and those embodied in ethical custom." (Friedman, 1970). Friedman argued amongst others that the organizations in question, or rather their executives, are not in the right position to take up further reaching responsibilities, because they lack democratic legitimization and a certain expertise needed for taking up and executing such responsibilities. Now, in reply to Friedman, it is often held that, as a matter of fact, a private organization, like a business company, cannot but take up further reaching responsibilities. Adherents to this point of view think that the organizations have to adapt their products, services, policies and activities to the moral attitudes of (potential) customers in order not to become a victim of a bad reputation or consumer protests which might negatively influence their returns and profits. Of course, in this view, the responsibilities are taken up not primarily for inherently moral reasons, but for strategic reasons (which, however, are supposed to happily coincide, in a kind of "invisible hand" - way).

Now, were we to apply this viewpoint to the problems coming along with the production of group profiles containing delicate information, then the possibility of these problems arising would not occasion any responsibility on the side of the organizations causing them, because they need not anticipate unfavourable attitudes of the public, as the public does not know about it. (Neither, for that sake, would they have a trace of a responsibility if we would take the Friedmanite stance, since the law and ethical customs, because of the deficiencies of the current legal and moral vocabularies discussed above, do not yield any guidelines in these matters.)

However, if we take the problems seriously from a moral point of view, that is: as problems which should not be treated as arrangements of fate, but as asking for some kind of solution, then we cannot but attribute a responsibility to the organizations at stake to at least make their activities subject to critical evaluation. In cases like these, the organizations, or some of their members, are as a matter of fact the only ones that may be expected to have an overview of the relevant activities and policy options. Therefore, they also are the only ones who may have at least a hunch of the possible social impact of these activities and options. To put it differently: the possibility of the problems like the ones discussed arising shows the deficiency of the classical stance which underpins the attribution of social responsibilities to private organizations only with strategic arguments. What should be expected from organizations or their executives, is at least a willingness to develop a kind of sensitivity for the possible social

impact of their activities and policies and a readiness to bring about maximal transparency of their activities and policies.

## **5. Conclusion**

In this paper, I have not tried to say something about a solution of the problems which may come along with the production of group profiles containing delicate information. My aim was just to show that the activities of organizations may sometimes create moral problems, which call for adaptations of our moral and legal conceptual frameworks, and which should prompt a reconsideration of the social responsibilities of organizations. I would like to close with three remarks.

Firstly, the problems which I have discussed are not necessarily tied up with the context of partial or complete privatization of social insurances. As I have pointed out earlier, similar problems may occur in organizations which have always been private. I have concentrated on an example taken from the context of (partial) privatization, however, because discussions on privatization of originally social institutions tend to narrow their focus mostly on arguments regarding cost-reduction and the consequences for the distribution of these institutions' specific services and provisions in society. The fact that insurance organizations which are to be privatized, often dispose of an enormous treasure of information about persons, which they may want to make useful in their enthusiasm to enter competition on the free market, however, is mostly left out of the debate.

Secondly, of course the production and use of group profiles are not completely new. Already for a long time, insurance companies use group profiles of some kind (albeit with reference groups of larger extent than the ones discussed here). Also consumer profiles are an already wellknown phenomenon. Nevertheless, what is new, is the scale on which the profiles can be made, thanks to the rapid developments in information technology. It is exactly this enormous growth of possibilities to generate knowledge about groups, which is new and which in combination with the delicate character of the data from which the profiles can be produced causes new problems.

Thirdly, one may wonder, how the desired willingness of organizations, or rather their executives, to develop a certain sensitivity to the social impact of their actions and policies and the readiness to strive for optimal transparency may be brought about, where there is no external incentive, such as the law or unfavourable attitudes of potential consumers. A start of an answer to the problem of motivating private organizations to act morally

responsible, where other incentives are lacking, to my mind, affects the basics of our way of thinking about business. It affects the widely shared, almost paradigmatic, view that the exclusive objective of business organizations is to survive and to make a profit in the most efficient way. As long as we refuse to consider, as Camenisch (1991) put it, the goals of business as subordinate to the goals and purposes of the larger society, where these goals and purposes cannot be exhaustively described in terms of the aggregation of welfare, these organizations cannot be expected to display any sensitivity for the social impact of their actions and policies, for inherently moral reasons only. What is needed in short is a new way of thinking about the diversity of functions of organizations in society as a whole.

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