Information Ethics: Privacy, Property, and Power
(University of Washington Press, 2005)

Introduction

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Information ethics is a relatively new area of study comprised of several distinct yet interrelated disciplines including applied ethics, intellectual property, privacy, free speech, and societal control of information. The various issues addressed within these disciplines, along with the rise of technology-based information control, have lead many to understand these domains as interconnected. For example, when a photographer captures the image of a nude girl running from a napalm attack, questions arise that are related to each of these areas. Does the photographer own the picture in question? Does the girl have a privacy right that overrides the photographer's ownership claims? Given that important information might be contained in the photograph, do free speech concerns play a role in deciding the moral issues surrounding the publication of the picture? Finally, if there were some reason to suppress the publication of the photograph independent of privacy—perhaps publication would turn public sentiment against some governmental interest, for example—would such interests provide a compelling justification for suppression? Obviously, the justifications and answers we give in one area of study will impact the arguments and policy decisions in other areas.

Needless to say, developing answers to these questions is philosophically challenging. This anthology was put together so that a number of important articles centering on the normative issues surrounding information control—in the broadest sense—could be found in one work. As we move further into the information age, which is marked by the shift from an industrial economy to an information-based economy, clarity is needed at the philosophical level so that morally justified policies and institutions can be adopted.

Information ethics is related to, but not the same as, computer ethics or ethics and information technology. Computer ethics includes topics such as value sensitive design and computers as social actors. The former considers the ethical dimensions of values imposed on users via the user interface while the latter examines the

ways in which computers play social roles. Neither of these issues is directly related to information ethics. Moreover, there are areas of information ethics that don't properly fall into the domain of computer ethics or ethics and information technology. For example, when government agents search an apartment, computers and information technology may play no role in the search or the ethical issues surrounding the event.

Before providing a summary of the articles included in this volume, we would like to give a brief overview of the different domains of inquiry that make up information ethics: applied ethics, intellectual property, privacy, free speech, and societal control of information. Each of these specialized areas of study has its own historical context. We will take them up in turn.

Moral Theory and Applied Ethics

Although the readings in Part I provide a general overview of ethical theory and a framework for analysis, we would like to address the relationship between religion and ethical claims—an issue that is only briefly considered in our readings. Ethics as an area of philosophical inquiry has been around for more than two thousand years. Even so, non-religious based ethics is still relatively new and applied ethics—for example medical ethics, business ethics, and environmental ethics—has only gained prominence in the last two decades or so.

The Euthyphro Objection to Theological Ethics

Despite the fact that the Euthyphro objection to theological ethics was formulated by Socrates at the time of his trial and execution in 399 BC, we have only in the last two hundred years started disentangling ethical claims from religious ones. The modern version of the Euthyphro objection to theological ethics goes as follows: First, consider the view which holds that actions are morally correct if and only if they are commanded by God and wrong if and only if they are forbidden by God; there is nothing beyond God's commandments that makes an action morally right or wrong. "Well," paraphrasing Socrates, "is an action right because God commands it or does God command an action because it is right?" More formally, Is X right because God commands X or does God command X because X is right? Suppose we grasp the first part of the dilemma and claim that X is right because God commands X. We may then ask a seemingly innocent question: Does God have reasons for

commanding what he does? If He does, then it is these reasons that make an action right or wrong and not His *mere* commandments and we find ourselves grasping the second part of the dilemma. If He has no reasons, then morality is arbitrary and whimsical.

To put the point another way, if X is right simply and for no other reason than God commanded X and if God were to command that we each cause as much suffering to other human beings as possible, then we ought morally to get on with the business of causing suffering. It does no good to say that God would never command such a thing if we are grasping the first horn of the dilemma—if X is right simply and for no other reason than God commanded X. What we want to say is that God would not command such a thing because causing as much suffering to other human beings as possible would be morally wrong. And this is just to grasp the second horn of the dilemma—God commands X because X is right, God forbids Y because Y is wrong. If so, then morality exists independently from God and is perhaps knowable via reason and argumentation. Notice as well, that we do not have to determine which God exists or what He commands, wills, or forbids to engage in moral reasoning.

Professional philosophers have generally accepted the reasoning that surrounds the Euthyphro dilemma, understanding that moral rightness and wrongness, if they exist, are a matter of reason and argument. Sadly, the Euthyphro dilemma is not widely understood. Thus, while the study of ethical principles is quite old, inquiry into non-religious based normative ethical theory is relatively new.

Normative Ethical Theory

Normative ethical theory has been traditionally broken into two domains—theories of the good value or theories of the good, and theories of obligation or theories of right. A theory of the good concerns the moral evaluation of agents, states of affairs, intentions, and the like as good, bad, valuable, and disvaluable. A theory of right concerns the moral rightness or wrongness of actions and policies. In general, theories of the good try to answer the question "What is valuable?" while theories of the right try to answer the question "What makes an action right or wrong?" How these two domains connect or interact determines the type of moral theory in question.

Axiologists claim that the good is prior to, more fundamental than, and determines the right. That is, we know what we ought to do by appealing to value and nothing else. The most prominent example of an axiological theory is consequentialism, which holds that moral rightness and wrongness depends on the value or disvalue of consequences. John Stuart Mill (Chapter 3) is a notable example of a consequentialist. Deontological theories, on the other hand, hold that there is more to moral rightness and wrongness than considerations of value. Immanuel Kant (Chapter 4), probably the most famous deontologist, argued that considerations of value were irrelevant to determining rightness. Rightness, for the deontologist, is prior to, more fundamental than, and determines the good.

Without establishing the "correct" moral theory and the reasons and arguments that generate moral *oughts*, applied ethicists have made progress by asking questions about what would be the case if this or that normative ethical theory turned out to be correct. Moreover, although there are numerous competing normative ethical theories, there may also be broad areas of agreement—and within these areas advances may be made.

Intellectual Property[1]

Although one of the first known references to intellectual property protection dates from 500 BC when chefs in the Greek colony of Sybaris were granted year long monopolies over particular culinary delights, our modern analysis of the normative, political, and legal questions related to intellectual property is tied to the English system that began with the Statute of Monopolies (1624) and the Statute of Anne (1709).[2] The Statute of Monopolies, considered the basis of modern British and American patent systems, granted fourteen-year monopolies to authors and inventors and ended the practice of granting rights to "non-original/new" ideas or works already in the public domain.

Literary works remained largely unprotected until the arrival of Gutenberg's printing press in the fifteenth century. Even then there were few true copyrights issued—most were grants, privileges, and monopolies.[3] The Statute of Anne (1710) established the first modern system of copyright protection. The statute began, "Whereas printers, booksellers, and other persons have lately frequently taken the liberty of printing, reprinting, and publishing books without the consent of the authors and proprietors . . . to their

very great detriment, and too often to the ruin of them and their families: for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write use books, be it enacted . . ." The law gave protection to the author by granting fourteen-year copyrights, with a second fourteen-year renewal possible if the author was still alive. In the landmark case *Miller v. Taylor* (1769) the inherent rights of authors to control what they produce, independent of statute or law, was affirmed. While this case was later overruled in *Donaldson v. Becket* (1774) the practice of recognizing the rights of authors had begun.[4]

Anglo-American systems of intellectual property are typically justified on utilitarian grounds. Limited rights are granted to authors and inventors of intellectual property "to promote the progress of science and the useful arts."[5] Thomas Jefferson, a central figure in the formation of American systems of intellectual property, expressly rejected any natural rights foundation for granting control to authors and inventors over their intellectual works. "The patent monopoly was not designed to secure the inventor his natural right in his discoveries. Rather, it was a reward, and inducement, to bring forth new knowledge."[6] Society seeks to maximize utility in the form of scientific and cultural progress by granting rights to authors and inventors as an incentive toward such progress.

In the last few years, however, intellectual property rights have been viewed as state-created entities used by the privileged and economically advantaged to control information access and consumption. Recent legislative and legal decisions dealing with peer-to-peer file sharing and extensions of copyrights have solidified this position. Needless to say, the normative, political, and social issues related to this area of information ethics remain hotly contested.

Privacy: Greece, China, and John Locke

Social recognition of privacy interests, unlike institutions of intellectual property, is older and more widespread. Examining the normative, political, legal, and historical contexts surrounding privacy is difficult because of an overabundance of subject matter—rituals of association and disassociation are cultural universals. To limit the discussion, we will focus on two cultures—ancient Greece and China—and one political and moral theorist—John Locke.

In Greek society the distinction between public and private activity was entrenched by the time of Socrates (470-399 BC), Plato

(427-347 BC), and Aristotle (384-322 BC). Typically the distinction was cast in terms of political activity compared to isolated intellectual pursuits.[7] As an early social critic, Socrates played two roles. He did not hold public office and sought his own personal ends, yet at the same time Socrates challenged many of the customs, institutions, and well-established philosophical theories of his day. In a very public way Socrates voiced the opinion that "the unexamined life is not worth living," calling upon individuals to examine their own personal views and beliefs. Socrates then publicly challenged, and in many cases humiliated, those who had not examined their own beliefs.

Plato was openly hostile to privacy, deeming it unnecessary and counterproductive in relation to the ideal state. In *The Laws* Plato advocates the elimination of private spheres of activity.

> The first and highest form of the state and of the government and of the law is that in which there prevails most widely the ancient saying, that "Friends have all things in common." Whether there is anywhere now, or will ever be, this communion of women and children and of property, in which the private and individual is altogether banished from life, and things which are by nature private, such as eyes and ears and hands, have become common, and in some way see and hear and act in common, and all men express praise and blame and feel joy and sorrow on the same occasions, and whatever laws there are unite the city to the utmost-whether all this is possible or not, I say that no man, acting upon any other principle, will ever constitute a state which will be truer or better or more exalted in virtue.[8]

Plato views privacy as something that is inherently disvaluable in relation to the perfect state. Moreover he recognizes no psychological, sociological, or political needs for individuals to be able to control patterns of association and disassociation with their fellows.

Aristotle, on the other hand, makes use of a public/private distinction in at least two ways. First, he recognizes a boundary between affairs of the state and household affairs. Jürgen Habermas noted, "In the fully developed Greek city-state the sphere of the *polis*, which was common to the free citizens, was strictly separated from the sphere of the *oikos*; in the sphere of the *oikos*, each individ-

ual is in his own realm."[9] Second, contemplative activity, which is necessary for human flourishing, requires distance, space, and solitude from public life.

In China, the public/private distinction was well understood by the Warring States period 403—221 BC.[10] Like Aristotle, Confucius (551-479 BC) distinguished between the public activity of government and the private affairs of family life. Confucius also contends that "a private obligation of a son to care for his father overrides the public obligation to obey the law against theft"[11] and that "a timid man who is pretending to be fierce is like a man who is so 'dishonest as to sneak into places where one has no right to be, by boring a hole or climbing through a gap.'"[12] Han Fei Tzu (280-233 BC) writes,

> When T s'ang Chieh [a mythic cultural hero] created the system of writing, he used the character for "private" to express the idea of self-centeredness, and combined the elements for "private" and "opposed to" to form the character for "public." The fact that public and private are mutually opposed was already well understood at the time of T s'ang Chieh. To regard the two as being identical in interest is a disaster which comes from lack of consideration.[13]

While not sophisticated and clearly contentious, the public/private distinction arose and was a matter of philosophical debate in two distinct cultural traditions. In both ancient Greece and China privacy was a commodity purchased with power, money, and privilege. Barriers such as walls, fences, and even servants secured areas of isolation and seclusion for the upper class. To a lesser degree, privacy was also secured by those with more modest means.

For John Locke (1632-1704) the public/private distinction stems from his conception of the state of nature, the legitimate function of government, and property rights. The state of nature was a pre-governmental state in which individuals had perfect freedom bounded by the law of nature.[14] As sovereign and moral equals, individuals in the state of nature had rights to life, liberty, and property. Unlike Thomas Hobbes, who viewed the state of nature as hypothetical rather than actual and conceived of it as a place where life was "solitary, poor, nasty, brutish, and short,"[15] Locke thought of it as a peaceful place governed by morality. Where Hobbes

envisioned a "war of all against all" Locke saw mere inconveniencies related to individual prejudices and competing interpretations of the law of nature.[16] The sole reason for uniting into a commonwealth, for Locke, was to remedy these inconveniencies. The function of government was to secure the rights of life, liberty, and property.

As has often been noted, property rights were central to Locke's conception of just government. In the state of nature, individuals could unilaterally take part of the commons—what was available for public consumption—and obtain private property rights.[17] These property rights allowed individuals the moral space to order their lives as they saw fit. On estates and behind fences, walls, and doors Lockean individuals secured a domain of private action free from public pressures. Public incursions into private domains required weighty justification.

It is these traditions that inform our modern conception of privacy which has only recently—in the last one hundred years—been codified in the law. Legal protections for privacy have been justified by appeal to one of three sources. First, in *Griswold v. Connecticut*,[18] Justice Douglas, writing the majority opinion, claimed that a legal right to privacy could be found in the shadows or penumbras of the First, Third, Fourth, and Fifth amendments to the U.S. Constitution. Second, in the same case Justice Goldberg invoked the Ninth and Fourteenth amendments in support of privacy. Goldberg claimed that privacy was one of the rights retained by the people and that the "due process" clause of the Fourteenth Amendment protects privacy as a value "implicit in the concept of ordered liberty."[19] Finally, a privacy interest was said to exist in the common law. In 1890, Samuel D. Warren and Louis D. Brandeis issued a call to arms in their celebrated paper "The Right to Privacy,"[20] the first selection in Part III of this anthology. The remedy for privacy invasions was to create a new tort. Torts are, in general, a negligent or intentional civil wrong that injures someone and for which the injured person may sue for damages.

In spite of these protections Ken Gormley, in "One Hundred Years of Privacy"[21] notes, "the court had found no reasonable expectation of privacy in an individual's bank records; in voice or writing exemplars; in phone numbers recorded by pen registers; in conversations recorded by wired informants; and a growing list of cases involving automobiles, trunks, glove compartments and closed containers therein."[22] The USA Patriot Act, adopted in

response to the terrorist attacks of September 11, 2001, further erodes privacy protections.

Privacy interests have also not fared well in relation to free speech and expression. The view that in entering the public domain individuals voluntarily relinquish privacy claims was solidified as a principle of law in a series of cases.[23] As noted by Patrick McNulty, "The public's right to receive news is nearly all encompassing. It extends to publicity about public figures who invite public attention by their activities, those who are involuntarily placed in the public eye such as crime victims, information as hard news, and information as entertainment."[24]

The advancement of information technology, along with recent threats to national security, have highlighted the ethical issues surrounding the use and control of sensitive personal information. The tensions between individual privacy, free speech, and national security continue to generate profound moral, legal, and political disagreements.

Free Speech and Societal Control of Information

One of the most famous defenses of free speech and expression is offered by John Stuart Mill in *On Liberty*. As an act-utilitarian, Mill believed that we should act to maximize overall net utility for everyone affected. In general, utilitarianism centers on the following three components:

i) the consequent component—the rightness of actions is determined by the consequences;
ii) the value component—the goodness or badness of consequences is to be evaluated by means of some standard of intrinsic value;
iii) the range component—it is the consequences of an act (or class of actions) as affecting everyone, and not just the agent himself, that are to be considered in determining rightness.

Act-utilitarianism is a theory which holds that an individual act is morally right if, and only if, it produces at least as much utility as any alternative action when the utility of all is counted equally. For example, classical act-utilitarianism is the view that individual acts are right or wrong solely in virtue of the goodness or badness of their consequences. The value component is identified in terms of

pleasure and pain, and the range or scope of the theory touches everyone affected by an act.

Mill viewed rules that govern behavior as mere rules of thumb or strategic rules that serve as helpful guides when there is no time to calculate the probable consequences of our actions or when personal biases cloud judgment.[25] The rightness or wrongness of following some rule on a particular occasion depends only on the goodness or badness of the consequences of keeping or breaking the rule on that particular occasion. If the goodness of the consequences of breaking the rule is greater than the goodness of the consequences of keeping it, then we must abandon the rule. On this account, rules may serve as useful guides but when it is clear that following them leads to bad consequences, we must break the rules. Strategic rules or rules of thumb of this sort may be thought of as rights.

Mill offered three arguments in defense of free speech rights: the benefits of liberty, thought, and expression argument; the argument from intrinsic value; and the best policy argument. In brief, the benefit of liberty argument holds that liberty introduces new ideas which may be correct, partially correct, or lead to truth; prevents received ideas from being held as mere prejudice; and keeps the meaning of received opinions alive. Thus even though Nazi ideology is false, evil, and hateful, Mill would defend such expression on the grounds that having such views presented to us from time to time forces us to think about such matters. Some of us may even try to figure out why we are right and they are wrong. In general, this process leads to good consequences—and for the utilitarian, only consequences matter.

The often-cited criticism of this argument is that it at most shows that liberty generally has some good consequences—this is not sufficient to show that free speech and expression are justified on utilitarian grounds. As Sir James Fitzjames Stephen puts it, "If . . . the object aimed at is good, if the compulsion employed such as to attain it, and if the good obtained overbalances the inconveniences of the compulsion itself, I do not understand how, upon utilitarian principles, the compulsion can be bad."[26] In short, other values or strategic rules—such as privacy or security—may trump expression in certain cases.

The argument from intrinsic value holds that having a sense of dignity, obtaining security, developing one's abilities to a consistent and harmonious whole, and liberty are each intrinsically valuable.

Thus, liberty is not related to flourishing as a cause to an effect but as a part to a whole. On this account any interference with liberty of thought and expression is necessarily a lessening of human flourishing or well-being.

As with the first argument, the argument from intrinsic value doesn't show that, on balance, the best consequences cannot be obtained by interfering with free speech and expression. When liberty conflicts with other elements of well-being, it may still be that interference with liberty is justified on utilitarian grounds.

Mill's final argument, the best policy argument, seeks to show that even if interference with liberty may, in principle, be justified in specific cases, we ought on utilitarian grounds to adopt the sort of absolute principle he endorses. Mill says, "[T]he strongest of all the arguments against the interference of the public with purely personal conduct is that when it does interfere, the odds are that it interferes wrongly and in the wrong place."[27] When government interferes with speech and expression, it will likely mess things up horribly. Thus, the best policy is to severely restrict the government's role in this area.

Nevertheless, in spite of Mill, there have been numerous restrictions placed on speech and expression: obscene pornography, hate speech, sexual harassment, yelling "fire" in a theater, are more prominent examples. Privacy rights and intellectual property rights also restrict speech and expression. In addition, after September 11, 2001, access to vast amounts of information held by government agencies, libraries, and other information storehouses has been restricted in the name of national security.

Overview of Articles

The articles contained in this volume center on the ethical, legal, and applied issues surrounding information control. Part I, An Ethical Framework for Analysis, begins with Tom Regan's "Introduction to Moral Reasoning." Regan provides a thoughtful analysis of several pitfalls related to answering moral questions. We do not answer moral questions by appealing to our feelings, desires, preferences, and beliefs. Moreover, there is no strength in numbers: the rightness or wrongness of an action or policy cannot be determined by appealing to what everyone thinks, feels, or prefers. Moral claims, Regan argues, are fundamentally different from claims about one's feelings, desires, or preferences. After discussing

how not to answer moral questions, Regan moves on to how we might obtain ideal moral judgments.

John Stuart Mill in "Utilitarianism" presents and defends utilitarian moral theory. As a consequentialist, Mill argues that moral rightness and wrongness are determined by good and bad consequences. This view is codified in the principle of utility: of the actions or policies available, one should do that act or adopt that policy which maximizes, or is expected to maximize, overall net utility for everyone affected. Mill clarifies and attempts to justify the principle of utility as the sole standard of rightness and wrongness.

Immanuel Kant in "The Metaphysics of Morals" defends a deontological theory which holds that consequences are irrelevant when determining moral oughts. For Kant, moral rightness and wrongness are grounded in a conception of rational agency and have nothing to do with good or bad consequences. Crudely put, you must do the right thing for the right reason—independent of the consequences—in order for your action to have genuine moral worth. Thus the shopkeeper who gives correct change because of a fear of being caught is doing the right thing for the wrong reason. Giving the correct change is morally right. But if the *reason* why someone performs a morally correct action is to *avoid some bad consequence*, then the action has no genuine moral worth.

In the final reading of Part I, is Virginia Held's "Feminist Transformations of Moral Theory." Held points out that the history of philosophy and the history of ethics have been constructed from a male point of view. The assumptions made and the concepts put forth are, however, not gender-neutral. Feminist philosophers reconceptualize ethics and philosophy by consciously examining history differently from non-feminist scholars. Emotion and conceptions of the self and society are taken as critical aspects of moral theory and must be included in a reconstruction of theory to include the experiences of women.

Part II, Intellectual Property: Moral and Legal Concerns, begins with Frank Easterbrook's "Intellectual Property Is Still Property." Easterbrook, a United States Court of Appeal Judge for the Seventh Circuit and a Senior Lecturer in Law at the University of Chicago School of Law, argues that the non-rivalrous nature of intellectual property does not undermine its status as property and that intellectual property should hold the same rights as physical property.

Tom Palmer weighs both sides of the argument in his article, "Are Patents and Copyrights Morally Justified?" He invokes the nineteenth century American abolitionist Lysander Spooner and the Jacksonian editorialist William Leggett to situate the debate in a historical context. While both men were staunch supporters of liberty, private property, and freedom of trade, they held opposing opinions on the status of intellectual property: Spooner advocated intellectual property rights while Leggett supported the unrestricted free exchange of ideas. Palmer uses this example to illustrate the difficult nature of intellectual property debates. Issues which may be clear when considering physical property become murky when applied to intellectual property. In order to examine the issues fully, Palmer looks at four possible theories of intellectual property: labor-desert, personality, utility, and "piggybacking" on the rights of tangible property.

Richard Stallman's essay "Biopiracy or Bioprivateering?" considers the ethics of patent monopolies on biological species. Stallman explains the concept of "biopiracy," in which biotechnology companies pay royalties to indigenous peoples or developing countries for use of human genes or natural varieties found only in given parts of the world. This concept presupposes, according to Stallman, that these things have an owner and can be privatized. Stallman asserts that natural genetic resources are public.

Adam Moore, in "Intangible Property: Privacy, Power, and Information Control," explains and defends a Lockean model of intangible property. The first part consists of a brief introduction to the domain or subject matter of intangible property along with an argument that justifies intangible property rights—including information ownership. Moore argues that if the acquisition of an intangible work satisfies a Pareto-based proviso, then the acquisition and exclusion are justified. Some acts of intangible property creation and possession satisfy a Pareto-based proviso. It follows that some rights to intangible property are justified. In the second part of his essay Moore makes a case for limiting what can be done with intangible property based on a harm restriction and privacy rights. Moore argues that while others may indeed own information about each of us, there are fairly severe restrictions on what can be done with this information, especially when we are considering sensitive personal information.

Part III, Privacy and Information Control, begins with the foundational article "The Right to Privacy" published in 1890 by Samuel

D. Warren and Louis D. Brandeis in the *Harvard Law Review*. The article, which was prompted by intrusions from the press into the private life of the Warren family, considers the tensions between privacy rights and other values like free speech and a free press. This article called for the creation of the tort, "invasion of privacy," which would allow individuals to sue for damages when the realm of private space or the "right to be left alone" was violated. The article was a response, not only to actual events, but also to the advancements of information technology at the time. Technologies such as photography, newspapers, and film presented a real danger to the once more secure realm of private space.

"Do you own your genes?" is the question with which Margaret Everett opened an earlier version of the paper included in this anthology. In this version of "The Social Life of Genes: Privacy, Property, and the New Genetics" she changes the focus of the question slightly and asks: "How did genes become commodities?" The body and its parts, including DNA and genes, have become a potential source of wealth. Licenses to certain DNA sequences are worth billions of dollars to the biotech companies that secure them. Yet are they truly available for sale? Do individuals have property rights over their own DNA? Everett addresses these questions while also examining the broader issue of privacy in relation to genetic information. For example, the results from DNA testing help predict future health and offer an array of other genetic information which can be interesting to employers, insurance companies, researchers, and pharmaceutical concerns.

Adam Moore, in "Employee Monitoring & Computer Technology: Evaluative Surveillance v. Privacy," addresses the tension between evaluative surveillance and privacy against the backdrop of the current explosion of information technology. More specifically, and after a brief analysis and justification of privacy rights, it is argued that information about the different kinds of surveillance used at any given company should be made explicit to the employees. Moreover, there are certain kinds of evaluative monitoring that violate privacy rights and should not be used in most cases.

James Stacey Taylor, in "Personal Autonomy, Privacy, and Caller ID" discusses the privacy-related advantages and disadvantages of Caller ID. Caller ID clearly offers a level of privacy to persons being called because it allows them to monitor and select who they want to speak to on the telephone. However, a disadvantage of Caller ID is that callers, who may legitimately not want to be

identified, no longer have the same degree of anonymity they had in the past. Taylor focuses on the issue of personal autonomy and whether services such as Caller ID enhance or diminish the user's ability to exercise autonomy as they wish. It has been argued that the option of subscribing to a Caller ID service provides the user with more options, thereby increasing their autonomy. Taylor questions this view and argues that making more options available may actually diminish the degree of autonomy that an individual is able to exercise. Nevertheless, he claims that respect for autonomy requires persons be allowed to subscribe to such services if they so choose

Part IV, Freedom of Speech and Information Control, focuses on issues of privacy, freedom of speech, and control of information. The section begins with Kent Greenawalt's essay, "Rationales for Freedom of Speech." Greenawalt considers several arguments in favor of free speech in relation to privacy and censorship. Greenawalt goes beyond considerations of a "minimal principle of liberty," which when applied to speech, would establish that "the government should not interfere with communication that has no potential for harm" and argues in favor of a principle of free speech. He considers the justifications for a principle of free speech from consequentialist and nonconsequentialist points of view.

Jack M. Balkin's "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society" addresses the tensions between free speech and intellectual property against the backdrop of ever-expanding digital technologies. He argues "to protect freedom of speech in the digital age, we will have to reinterpret and refashion both telecommunications policy and intellectual property law to serve the values of freedom of speech." Freedom of speech depends on the design of technological infrastructures that support expression and secure widespread democratic participation.

The final paper in this section, "Privacy, Photography, and the Press" takes up issues first addressed by Samuel Warren and Louis Brandeis in "The Right to Privacy." Although legitimate expectations of privacy in public space may weigh in favor of additional restrictions on unwanted photography, this essay argues that the important policies underlying the First Amendment's guarantees of freedom of speech and press counsel against the expansion of the right to privacy at the expense of photographic expression.

Part V, Governmental and Societal Control of Information opens with Griffin S. Dunham's "Carnivore, the FBI's E-mail Surveillance System: Devouring Criminals, Not Privacy." Carnivore is an Internet monitoring system. It has been likened to a phone tap and is used to monitor e-mail conversations. The device is portable and can be placed on any server that, according to the FBI and the Department of Justice, is suspected of hosting accounts which are a threat to national security or other types of crimes: terrorism, information warfare, child pornography, fraud, and virus writing and distribution. Concerns that the system could target any innocent person who sends email across a server under surveillance have caused a great deal of debate about the legitimacy of using Carnivore. Dunham argues for the necessity of Carnivore in enabling law enforcement to keep up with criminals who utilize cyberspace to communicate criminal plans. He also attempts to dispel privacy concerns associated with the system by allaying misconceptions and fears related to its implementation and usage.

The second paper in this section looks at the relationship between privacy and accountability. Anita Allen's "Privacy Isn't Everything: Accountability as a Personal and Social Good" examines the concept of accountability in light of John Stuart Mill's essay *On Liberty*, in which he wrote, "the individual is not accountable to society for his actions, insofar as these concern the interests of no person but himself." Accountability is now required far beyond the bounds of actions that appear to "concern the interests of no person" but the actor. Allen defines the term "the New Accountability," which she claims is a product of social, economic and personal freedoms, as well as an ambivalence towards forms of privacy that could be useful to others if uncovered.

The final paper in this anthology is Jacob Lilly's "National Security at What Price? A Look into Civil Liberty Concerns in the Information Age under the USA Patriot Act." Lilly examines the balancing act necessary to ensure that the democratic rights upon which the United States was founded are maintained while measures to protect national security are developed and enforced. He compares the USA Patriot Act with other measures instituted in the name of national security: the declaration of a state of emergency by Lincoln at the outbreak of the Civil War, along with the suspension of all rights in border-states; the internment of Japanese-Americans during World War II; and McCarthyism during the Cold War, just to name a few. Lilly proposes what he refers to as the "One Step

Lower" test which would provide another layer of review before legislation could be implemented. Drastic changes proposed by the government could not be hastily made in times of national crisis.

Conclusion

This anthology offers the reader a wide selection of papers that address issues of information ethics. Many of these articles are foundational and the collection as a whole represents the normative issues surrounding informational control. Though information ethics as such is a relatively new area of study, we have sought in this anthology to unite traditional ethics and philosophical inquiry with contemporary intellectual exploration and debate. The papers collected here represent the different domains of information ethics, and we have attempted to provide a context, based in philosophical thought, from which the entire anthology can be read.

Notes

1. Part of this section is taken from material published in *Intellectual Property and Information Control* (New Brunswick, NJ: Transaction Pub., 2001, 2004), Chapter 2.

2. See Bruce Bugbee, *Genesis of American Patent and Copyright Law* (Washington, D.C.: Public Affairs Press, 1967).

3. For example in 1469 John of Speyer was granted the right to conduct all printing in Venice for a term of five years.

4. *Miller v. Taylor* (1769), 4 Burr. 2303; *Donaldson v. Becket* (1774), 4 Burr. 2408.

5. U.S. Constitution, § 8, para. 8.

6. See W. Francis and R. Collins, *Cases and Materials on Patent Law: Including Trade Secrets - Copyrights - Trademarks*, fourth edition (St. Paul, Minn.: West Publishing Company, 1987), 92-93. Prior to the enactment of the US Constitution a number of states adopted copyright laws that had both a utilitarian component and a natural rights component. A major turning point away from a natural rights framework for American institutions of intellectual property came with the 1834 decision of *Wheaton v. Peters* 33 US (8 Pet.) 591, 660-1 (1834).

7. For a rigorous analysis of the historical, sociological, and cultural aspects of privacy see Barrington Moore, Jr., *Privacy: Studies in Social and Cultural History* (New York: M.E. Sharpe Inc. Pub., 1984).

8. Plato, *The Laws*, translated by Benjamin Jowett (Amherst, N.Y.: Prometheus Books, 2000), Chapter 5, 738d-e.

9. Jürgen Habermas, *The Structural Transformation of the Public Sphere*, translated by Thomas Burger and Frederick Lawrence (Cambridge: MIT Press, 1962) reprinted in part in Richard C. Turkington, George B. Trubow, and Anita L. Allen, eds., *Privacy: Cases and Materials* (Houston, Texas: John Marshall, 1992), p. 3, cited in Judith Wagner DeCew, *In Pursuit of Privacy: Law, Ethics, and the Rise of Technology* (Ithaca NY: Cornell University Press, Ithica, 1997), p. 10.

10. See Barrington Moore, Jr., *Privacy: Studies in Social and Cultural History*, p. 223.

11. Ibid.

12. Ibid.

13. Ibid., p. 221.

14. John Locke, *Second Treatise of Government*, edited by C.B. Macpherson (Indianapolis: Hackett Pub. Co. 1980) Chapter II "Of the State of Nature," p. 8.

15. Thomas Hobbes, *Leviathan*, edited by Michael Oakeshott (New York: Collier Books, 1962), Chapter 13, p. 100. John Locke, *Second Treatise of Government*, Chapters II-IV p. 8-18.

16. Hobbes, *Leviathan*, Chapter 13, p. 101.

17. John Locke, *Second Treatise of Government*, Chapter V. For an account of how a Lockean could argue for intellectual property rights see Adam D. Moore, *Intellectual Property and Information Control: Philosophic Foundations and Contemporary Issues* (New Brunswick: Transaction Publishing/Rutgers University, 2001, 2004).

18. *Griswold v. Connecticut,* 381 U.S. 479 (1965).

19. Ibid.

20. Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4 (December 15, 1890): 193-220.

21. Ken Gormley, "One Hundred Years of Privacy," *Wisconsin Law Review* (1992): 1369.

22. *Berger v. New York*, 388 U.S. 41 (1967); *United States v. United States Dist. Court*, 407 U.S. 297 (1972); *Camara v. Municipal Court*, 387 U.S. 523 (1967); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977); *Mancusi v. De Forte*, 392 U.S. 364 (1968); *United States v. Chadwick*, 433 U.S. 1 (1977); *Arkansas v. Sanders*, 442 U.S. 753 (1979); *Walter v. United States*, 447 U.S. 649 (1980); *Delaware v. Prouse*, 440 U.S. 648 (1979); *United States v. Miller*, 425 U.S. 435 (1976); *United States v. Dionisio,* 410 U.S. 1 (1973); *Smith v. Maryland*, 442 U.S. 735 (1979); *United States v. White*, 401 U.S. 745 (1971); *Chambers v. Maroney*, 399 U.S. 42 (1970); *South Dakota v. Opperman*, 428 U.S. 364 (1976); *Rakas v. Illinois*, 439 U.S. 128 (1978); *California v. Carney*, 471 U.S. 386 (1985); *United States v. Ross*, 456 U.S. 798 (1982); *New York v. Belton*, 453 U.S. 454 (1981). Cited in Gormley, "One Hundred Years of Privacy" n172-183.

23. See for example *Melvin v. Reid*, 112 Cal.App. 285, 290 (1931) and *Gill v. Hearst Publishing Co*. 40 Cal. 2d 224 (1953).

24. Patrick J. McNulty, "The Public Disclosure of Private Facts: There is Life after Florida Star," *Drake Law Review* 50 (2001): 108.

25. For similar views see J. J. C. Smart, "Extreme and Restricted Utilitarianism," in *Theories of Ethics*, edited by Philippa Foot (Oxford: Oxford University Press, 1967), and David Lyons, *Forms and Limits of Utilitarianism* (Oxford: The Clarendon Press, 1965).

26. Sir James Fitzjames Stephen, *Liberty, Equality, Fraternity: And Three Brief Essays* (Chicago: University of Chicago Press, 1991).

27. Mill, *On Liberty* (London: Longman, Roberts, & Green Co., 1869), Chapter IV.