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An Ethical Duty to Protect One's Own Information Privacy?

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AN ETHICAL DUTY TO PROTECT ONE'S OWN INFORMATION PRIVACY?

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I. INTRODUCTION

What good might privacy do or represent for us? Philosophers, lawyers, political theorists, and policy makers are hard at work seeking to understand the value of privacy. They are asking, for example, "whether and, if so, why privacy is valuable in a democratic society, and what implications privacy has for the ways we see and treat each other."[1] As summed up by Annabelle Lever: "Proponents of privacy believe that it promotes people's freedom, equality, and happiness . . . . [P]rivacy can help to protect people from unjustified scorn, humiliation and recrimination, as well as from bribery and coercion . . . ."[2] Privacy is indeed valuable for democratic societies like ours, in which people need the capacity to think and act independently.[3] Privacy has value for individuals, and in the words of Julie Cohen, "generate[s] large positive spillovers for society."[4]

The question I will take up in this lecture is not, however, the familiar one of whether privacy has value—intrinsic or instrumental, personal or collective. Instead, it is a broad question about the ascription of ethical responsibility: in addition to any moral obligation to protect others'

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1. ANNABELLE LEVER, ON PRIVACY 1 (2012) (discussing the secret ballot, sexual orientation outing, sex reproduction and family life, and property values as they relate to notions and ideals of privacy).

2. *Id.* at 85.

3. ANITA L. ALLEN, UNPOPULAR PRIVACY: WHAT MUST WE HIDE? 21–22 (2011) [hereinafter ALLEN, UNPOPULAR PRIVACY]; ANITA L. ALLEN, WHY PRIVACY ISN'T EVERYTHING: FEMINIST REFLECTIONS ON PERSONAL RESPONSIBILITY 5–7 (2003).

4. Julie E. Cohen, *Configuring the Networked Citizen*, *in* IMAGINING NEW LEGALITIES: PRIVACY AND ITS POSSIBILITIES IN THE 21ST CENTURY 129, 144 (Austin Sarat et al. eds., 2012).

information privacy,[5] do individuals also have a moral obligation to protect their own information privacy? Moreover, could protecting one's own information privacy be called for by important moral virtues, as well as obligations or duties?[6] I broached the issue of protecting one's own privacy as a requirement of ethics in a recent book about physical and information privacies.[7] But limited space and a broad, ambitious agenda prevented me from fully examining the case for and against the ascription of ethical duties to protect one's own privacy to individuals, So, I return to it here.

Safeguarding others' privacy is widely understood to be a responsibility of government, business, and individuals. The "virtue" of fairness and the "duty" or "obligation" of respect for persons arguably ground other-regarding responsibilities of confidentiality and data security. But is anyone ethically required—not just prudentially advised—to protect his or her own privacy? If so, how might a requirement to protect one's own privacy and related ethical virtues properly influence everyday choices, public policy, or the law?[8] I want to test the idea of an ethical mandate to protect one's own privacy, while identifying the practical and philosophical problems that bear adversely on the case.

II. THE GREAT INFORMATION PRIVACY GIVE-AWAY

With respect to information privacy, the question of a duty to protect one's own privacy is an especially timely and important one. I focus on information privacy—as opposed to decisional or physical privacy—for that reason.[9] We are in the midst of an Era of Revelation.[10] Our time is

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5. *Cf.* Anita L. Allen, *Natural Law, Slavery, and the Right to Privacy Tort*, 81 FORDHAM L. REV. 1187 (2012) (noting the common law obligation to protect privacy based on respect for others' freedom).

6. In asking this question, I mean to use the paired terms "duty" and "obligation" synonymously and also the terms "moral" and "ethical" synonymously as academic philosophers often do. Yet, "duty" and "ethical" sometimes connote specific social roles. And "ethical" is sometimes understood to designate a more cosmopolitan system of norms than "moral." Questions of ethical duty differ in key respects from questions of ethical moral virtue. The former center around concerns of conduct, the latter concerns of character.

7. ALLEN, UNPOPULAR PRIVACY, *supra* note 3, at 195–97.

8. *Cf.* JEAN COHEN, REGULATING INTIMACY: A NEW LEGAL PARADIGM (2004) (illustrating that the military's "don't ask, don't tell" rules made a duty of privacy by forcing homosexuals to conceal facts revealing their sexual orientations). It would not follow from the ascription of self-regarding information privacy obligations that the information people are obliged to keep quiet is all and only the information that makes other people uncomfortable and whose suppression reinforces prejudice and inequality.

9. ANITA L. ALLEN, PRIVACY LAW AND SOCIETY 4–6 (2d ed. 2011) (distinguishing informational from physical and decisional uses of "privacy" in the law).

10. Anita L. Allen, *What Must We Hide: The Ethics of Privacy and the Ethos of Disclosure*, 25 ST. THOMAS L. REV. 1 (2012).

characterized by what I term the "Great Privacy Give-Away."[11] People are giving away more and more personal data to intimates and strangers for a variety of self-interested, altruistic, or civic-minded reasons.

Some scholars and other commentators have expressed admiration and support for individuals who choose freely to share personal information, and some have concluded that it is good for society that individuals are choosing to share personal data.[12] Indeed, there can be good reasons to share, even what is deemed highly sensitive personal data, as a recent report of the Presidential Commission for the Study of Bioethical Issues found with respect to individuals' sensitive whole genome sequencing data sought by biomedical researchers.[13]

In the U.S. and most other parts of the world, contemporary modes of communication feature extensive, high-technology-aided personal-information sharing that is enjoyable, rewarding, often practically necessary, and publicly beneficial. The benefits of information disclosure are sufficiently numerous, in fact, that it may strike some as facially implausible that there could be any such thing as an ethical obligation not to disclose. How could we be duty-bound to withhold information about ourselves?

Of course, we all recognize special professional duties of confidentiality and secrecy, which are specific modes of legally and ethically mandated information privacy. Thus, in the usual case, a federal government employee cannot ethically reveal classified information without authorization.[14] A lawyer cannot ethically share many of the secrets she discusses with her clients in the course of representation.[15] But

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11. *See* ALLEN, UNPOPULAR PRIVACY, *supra* note 3, at 156, 162. I also refer to a privacy "take away."

12. *Cf.* Eric Posner, *Liberalism and Concealment*, NEW REPUBLIC (Dec. 13, 2011), http://www.tnr.com/book/review/unpopular-privacy-anita-allen ("If this is so, Allen's prescription is exactly backward: we should insist on unpopular *publicity*, and mandate transparency, not privacy. In the meantime, we should praise rather than condemn those young people who lead the way by insouciantly uploading their private lives to the web."). For the record, I believe Professor Posner's review badly misfires. Others have found more to praise. *See, e.g.*, Judith Wagner DeCew, *Unpopular Privacy: What Must We Hide?*, NOTRE DAME PHIL. REVS. (June 31, 2012) (book review), http://ndpr.nd.edu/news/31588-unpopular-privacy-what-must-we-hide/.

13. PRESIDENTIAL COMM'N FOR THE STUDY OF BIOETHICAL ISSUES, PRIVACY AND PROGRESS IN WHOLE GENOME SEQUENCING (2012), www.bioethics.gov/cms/sites/default/files/PrivacyProgress508_1.pdf.

14. For example, Bradley E. Manning is a U.S. soldier in his twenties currently awaiting trial to determine whether he violated federal law when, while stationed in Iraq and without authorization, he turned over volumes of diplomatic cables to Wikileaks, which then released them to the general public. Archive of Articles on Bradley Manning, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/people/m/bradley_e_manning/index.html (last visited Feb. 23, 2013).

15. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2003) ("Confidentiality Of Information. (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). (b) A lawyer may reveal information relating to the

in the Era of Revelation, I surmise many would argue that there is no moral or ethical basis for disapproving if a government employee, a lawyer, or anyone else freely chooses to share intimacies about her *own* life. On this perspective, without any moral or ethical shadow, a person can always reveal that she practices celibacy, has breast cancer, is burdened by a pile of unpaid debts, or dislikes foreigners. Only norms of tact, manners, and taste apply. (A philosopher might argue, building on Helen Nissenbaum's powerful descriptive account of information privacy, that there are ethical norms of appropriateness, not mere guidelines of taste and tact at stake here.[16])

A new, technophilic generation appears to have made disclosure the default rule of everyday life, and it cannot imagine things any other way. Commentators excitedly claim that a new generation has rejected or redefined informational privacy.[17] Some older people welcome the change. "Let us celebrate the insouciance of youthful privacy indifference!" one of my grey-haired legal colleagues asserts, ironically repeating market-economy efficiency arguments for transparency articulated more than fifty years ago, pre-Internet.[18] The young and young at heart may indeed look back and snicker at the high-toned insistence of Judge Richard Posner in *Haynes v. Alfred A. Knopf, Inc.*[19] that the mysteries of privacy universally extend to graphic details of the intimacies of the bedroom and toilet.[20] "Big Brother"—not the Orwell character but the European and American reality TV show that places young adults on public display nearly 24/7— is already vintage.[21]

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representation of a client to the extent the lawyer reasonably believes necessary . . . . (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.").

16. *Cf.* Tony Doyle, *Helen Nissenbaum, Privacy in Context: Technology, Policy, and the Integrity of Social Life*, 45 J. VALUE INQUIRY 97, 99–100 (2010) (book review) (discussing that norms of appropriateness are constitutive of privacy).

17. *See* Patricia Sanchez Abril, *A (My)Space of One's Own: On Privacy and Online Social Networks*, 6 NW. J. TECH. & INTELL. PROP. 73, 73 (2007).

18. Eric Posner, *supra* note 12 (making (without express attribution) arguments made by Richard Posner in his early work on privacy).

19. 8 F.3d 1222, 1229 (7th Cir. 1993) ("Even people who have nothing rationally to be ashamed of can be mortified by the publication of intimate details of their life. Most people in no wise deformed or disfigured would nevertheless be deeply upset if nude photographs of themselves were published in a newspaper or a book. They feel the same way about photographs of their sexual activities, however 'normal,' or about a narrative of those activities, or about having their medical records publicized. Although it is well known that every human being defecates, no adult human being in our society wants a newspaper to show a picture of him defecating. The desire for privacy illustrated by these examples is a mysterious but deep fact about human personality. It deserves and in our society receives legal protection.").

20. *Id.*

21. *Big Brother*, IMDB.COM, http://www.imdb.com/title/tt0251497/ (last visited Mar. 13, 2013).

Yet, if we are to take normative ethics seriously—and I recognize that not everyone wants to or can—we have to be open to the possibility that some of what we do and enjoy doing may not be ethically good or best. We may have ethical reasons and obligations to do things differently. The fact that a new generation has rewritten the rules of privacy or abandoned privacy as a value altogether would not prove that privacy was or is mostly worthless. Admittedly, values do erode; values can outlive their times.[22] In my lifetime, it was widely considered immoral—and illegal—for unmarried people and people of different races to cohabitate.[23]

It is not especially problematic to say, with ethics in mind, that someone has an obligation to protect other people's privacy. That we can understand and agree with. We have no problem saying that people have a moral obligation not to make gratuitous, cruel, unconsented-to information disclosures about others. In 2010, Rutgers University student Dharun Ravi violated that ethical duty with horrendous consequences. He surreptitiously webcast his roommate Tyler Clementi being intimate with another man, which prompted a mortified Clementi to commit suicide. More than an excusable prank, it is plain wrong to secretly broadcast someone's date with a consenting adult in his own home.

Now, as to duties to protect your own privacy, can we sensibly ascribe these? With prudence in mind, it is fairly common to ascribe obligations of self-care relating to informational privacy and data protection. To protect my reputation and feelings there are certain practical precautions I should take. Prudent self-interest demands that I password-protect electronic access to my banking accounts at Wells Fargo. If I download my medical records from myuniversitymedicine.com, I should use the password-protect option. I should periodically change my university.edu e-mail password. I should think hard about what I put into Dropbox,[24] about what I reveal about my location via Foursquare,[25] and about the content of my Tumblr[26] postings. But are self-regarding moral duties, as well as self-interested practical strategies, implicated in online life?

Sometimes people are so inattentive to their privacy that moral and ethical values do appear to come into play. Recall former Congressman Anthony Weiner, a Democratic member of the United States House of

22. *Cf.* Kathryn Abrams, *Disenchanting the Public/Private Distinction*, *in* IMAGINING NEW LEGALITIES: PRIVACY AND ITS POSSIBILITIES IN THE 21ST CENTURY 25, 25–26 (Austin Sarat et al. eds., 2011) (advocating a less "enchanted" view of privacy that acknowledges the normative tensions of valuing the public and valuing the private).

23. *See* Loving v. Virginia, 388 U.S. 1, 2 (1967).

24. DROPBOX, https://www.dropbox.com/ (last visited Mar. 13, 2013).

25. FOURSQUARE, https://foursquare.com/ (last visited Mar. 13, 2013).

26. TUMBLR, http://www.tumblr.com/ (last visited Mar. 13, 2013).

Representatives from New York.[27] Congressman Weiner sent sexually suggestive images of his pelvic region clad in tight-fitting underwear that revealed the outlines of his penis. He sent the images in Twitter messages to young women, ages 21 and 17, whom he did not know.[28] As a consequence of this reckless behavior, Weiner was forced to resign from office in 2011. Weiner disrespected himself, displaying little regard for the privacy of his body and sexual urges.[29] The Weiner case shines a light on the specific question I want to explore in this lecture: whether anyone has a moral obligation to protect his or her own information privacy, and if so, whether such an obligation ought to influence choice, policy, or the law.

If people have an ethical obligation to protect their own privacy, there are more than merely prudential grounds for privacy vigilance. If a person has a moral obligation to protect her own privacy, then assuming moral obligations creates prima facie reasons for acting, she would have a reason over and above prudent self-interest to adopt measures to safeguard important privacies. To protect informational privacy, ethical goodness might require that she, for example, not aim sexy pictures at minors or the general public. Ethics might require that she secure financial information when transacting business online. Ethics might require that she keep under wraps whole-genome-sequencing data generated from clinical care or research. She might even have an obligation to moderate free speech and the use of social media that widely reveal her location, plans, activities, feelings, and beliefs.

Of major significance, if people have an obligation to protect their own privacy, there could be special "corporate responsibility" grounds for implementing meaningful and effective consumer privacy policies.[30] We could praise firms who embrace strong privacy-protection policies and adhere to codes of "fair information practices,"[31] "generally accepted privacy principles,"[32] or "privacy by design"[33]—these measures facilitate

27. Jennifer Preston, *Weiner Confirms He Sent Private Messages to Girl, 17*, N.Y. TIMES (June 10, 2011), http://www.nytimes.com/2011/06/11/nyregion/weiner-says-he-sent-private-messages-to-girl-17.html.

28. *Id.*; Ashley Parker & Michael Barbaro, *In Reckless Fashion, Rapid Online Pursuits of Political Admirers*, N.Y. TIMES (June 8, 2011), http://www.nytimes.com/2011/06/09/nyregion/weiners-pattern-turning-political-admirers-into-online-pursuits.html.

29. Parker & Barbaro, *supra* note 28; *see also* Brian Stelter, *Upending Anonymity, These Days the Web Unmasks Everyone*, N.Y. TIMES (June 20, 2011), http://www.nytimes.com/2011/06/21/us/21anonymity.html.

30. *Cf.* Anne Cheung & Rolf H. Weber, *Internet Governance and the Responsibility of Internet Service Providers*, 26 WIS. INT'L L.J. 403 (2008) (outlining the case for ISP responsibility for human rights and constitutional rights protections).

31. *Fair Information Practice Principles*, FEDERAL TRADE COMMISSION, http://www.ftc.gov/reports/privacy3/fairinfo.shtm (last modified Nov. 23, 2012).

32. AM. INST. OF CERTIFIED PUB. ACCOUNTANTS, INC. & CANADIAN INST. OF CHARTERED ACCOUNTANTS, GENERALLY ACCEPTED PRIVACY PRINCIPLES 1, 13 (2009), http://www.aicpa.org/

morally prescribed data management practices by individuals. (The analogy here is praising manufacturing firms for installing safety devices on dangerous products like guns, automobiles, and circular saws to help consumers meet their obligation to use products safely.)

The fact that Facebook.com (Facebook) offers ways for its globally popular social networking site to be used for restricted communications within intimate circles takes on ethical weight.[34] Facebook makes it easier for users to comply with ethical duties by hosting less accessible secret pages than it would if it did not. While Facebook has greatly contributed to the culture of extreme self-revelation, I am suggesting that Facebook and other social media firms understand themselves as partners in our ethical goodness. The fact that computer rental companies extracted sensitive data from machines used by their customers[35] has a two-fold unethical dimension. Not only did such firms malevolently engage in spying,[36] but they also undermined their unsuspecting customers' abilities responsibly to protect personal data from falling into the hands of unwanted third parties.

If people have an obligation to protect their own privacy, we might applaud public laws and government entities that confer rights of anonymity, restrict wiretapping, and limit access to stored communications.[37] Indeed, public law, rules, and judicial choices have implications for the ease with which persons can satisfy the moral duty I am probing. In 2012, a court in Minnesota found that a Facebook user had a reasonable expectation of privacy under the Fourth Amendment in her password-protected Facebook wall postings.[38] The federal district court that made this finding honored the choice many make, whether for moral or

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interestareas/informationtechnology/resources/privacy/generallyacceptedprivacyprinciples/downloadabledocuments/gapp_bus_%200909.pdf.

33. ANN CAVOUKIAN, PRIVACY BY DESIGN: THE 7 FOUNDATIONAL PRINCIPLES 1 (2011), http://www.privacybydesign.ca/content/uploads/2009/08/7foundationalprinciples.pdf.

34. I am not suggesting that the policies are adequate, only that they are on the right track.

35. *FTC Halts Computer Spying*, FEDERAL TRADE COMMISSION (Sept. 25, 2012), http://www.ftc.gov/opa/2012/09/designware.shtm.

36. Anita L. Allen, *The Virtuous Spy: Privacy as an Ethical Limit*, 91 MONIST 3, 3 (2008).

37. The Electronic Communications Privacy Act of 1986, 18 U.S.C. §§ 2510–22 (2006), regulates access to communications and stored communications. The federal courts have found that there is a constitutionally protected interest in anonymous Internet use. *See* Anita L. Allen, *First Amendment Privacy and the Battle for Progressively Liberal Social Change*, 14 U. PA. J. CONST. L. 885, 925 nn.229–30 (2012) (citing Mobilisa, Inc. v. Doe, 170 P.3d 712, 717 (Ariz. Ct. App. 2007); Doe v. Cahill, 884 A.2d 451, 456 (Del. 2005); Indep. Newspapers, Inc. v. Brodie, 966 A.2d 432, 438–41 (Md. 2009); Dendrite Int'l, Inc., v. Doe No. 3, 775 A.2d 756, 760, 765 (N.J. Super. Ct. App. Div. 2001); Deer Consumer Prods., Inc. v. Little, 938 N.Y.S.2d 767 (N.Y. Sup. Ct. 2012); *In re* Does 1–10, 242 S.W.3d 805, 819–20 (Tex. Ct. App. 2007)).

38. R.S *ex rel.* S.S. v. Minnewaska Area Sch. Dist. No. 2149, No. 12-588(MJD/LIB), 2012 WL 3870868, at *16–17 (D. Minn. Sept. 6, 2012). The court held that a juvenile may proceed on a claim that her school violated her First and Fourth Amendment speech and privacy rights by punishing her based on what were intended to be limited access Facebook postings from a home computer related to her dislike of a school employee. *Id.* at *9–13.

prudential reasons, to protect their own informational privacy. The court, like Facebook, functioned in the case as a partner in empowering Facebook users' moral compliance.

III. THE CHALLENGE OF MORAL THEORY

The complex question of whether and why privacy is an important ethical value is related to but distinct from the question of whether persons have a moral (or ethical) duty (or obligation) to protect their own privacy. Privacy could be a preeminent ethical good with widespread political and legal implications, and yet it still may be highly problematic to ascribe to individuals the ethical responsibility to protect their own privacy.

First, the ascription may be problematic because the very concept of duties or obligations of self-regard is analytically incoherent. Or, second, there could be normative problems. For instance, there might be a plenitude of practical reasons for a person to try as hard as he or she can to protect his or her own informational privacy without it making good normative sense to ascribe to him or her an ethical duty to do the same thing. For example, we should all try hard to eat vegetables to promote our health, but surely there is no moral duty as such to eat vegetables!

Let me suggest the schematic of an argument in favor of self-regarding information privacy duties. It goes like this. There are moral duties obliging moral agents to act in some ways rather than others. Moral duties include duties to others *and* duties to oneself. Among duties to self is a duty to protect one's own informational privacy. One ought to limit disclosures of information about oneself for utility reasons, pertaining to one's reputation and future opportunity; and/or virtue reasons, pertaining to modesty, reserve and temperance; and/or Kantian reasons, pertaining to dignity, self-respect, autonomy, and freedom. In addition to "first-order" duties to protect one's own privacy, there may also be "second-order," derivative duties to protect one's own privacy for the sake of specific others or the community. My genome is also my siblings' genome, so I have an obligation to protect the privacy of my genome. My checking account number is also my husband's checking account number, so I have an obligation to protect the privacy of my checking account number. Among duties to others (family, friends, community) is a second-order duty to protect one's own informational privacy.

The outlined argument starts with a distinction between duties to oneself and duties to others, and immediately therefore faces a challenge. The distinction embraces a controversial perspective whereby moral agents' moral obligations extend not only to the world but also to the moral

agents themselves.[39] Morality is in this sense both other-regarding and self-regarding. Though I am not a pure Kantian deontologist— I do not rule out that the moral grounds for obligations can be consequentialist as well as non-consequentialist—I share with Kantians the controversial belief that moralists can ascribe coherently duties to—or at least duties regarding[40]—the self.

Kant derived both duties to oneself and duties to others from the categorical imperative to "[s]o act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means,"[41] or alternatively—Kant advanced several formulations—to "act only in accordance with that maxim through which you can at the same time will that it become a universal law."[42] For Kant a moral duty is "the necessity of an action from respect for [moral] law,"[43] the categorical imperative. Only actions performed from a good will, from the motive of duty, have true "moral worth" in Kant's special sense. Duties Kant recognized included the duty of honesty, the duty to preserve one's life, and the duty of beneficence.

Kant himself further divided duties to others and duties to self into "perfect" and "imperfect" duties.[44] (He also distinguished between positive and negative duties.[45]) Kant described as "perfect" duties that are strict, narrow, and unremitting,[46] such as the duty to tell the truth. He labeled "imperfect" the wide and meritorious duties, such as the duty of beneficence and the duty to develop one's talents.[47]

My views about moral duty are Kantian in flavor but are not views Immanuel Kant himself precisely held. On my understanding, duties to others are duties of care and respect. They are imperatives to act and omit in particular ways. Duties to others require that we not gratuitously cause bodily harm, that we keep our promises, and that we not degrade and

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39. LARA DENIS, MORAL SELF-REGARD: DUTIES TO ONESELF IN KANT'S MORAL THEORY 36 (Robert Nozick ed., 2001) [hereinafter DENIS, MORAL SELF-REGARD].

40. Henry Richardson suggested to me that certain philosophical problems can be avoided if we speak of duties "regarding the self" rather than duties "to the self."

41. IMMANUEL KANT, PRACTICAL PHILOSOPHY 80 (Mary J. Gregor ed., 1996) (emphasis omitted).

42. *Id.* at 73 (emphasis omitted).

43. ALLEN W. WOOD, KANT'S ETHICAL THOUGHT 43 (1999) (emphasis omitted).

44. *Id.* at 44.

45. DENIS, MORAL SELF-REGARD, *supra* note 39, at 36–43.

46. *Id.* at 37, 43.

47. *Id.* at 37. Both duties come from the same categorical principle, but their content differs since according to Kant we have no duty to perfect others or to promote our own happiness, but we do have a duty to promote others' happiness and perfect ourselves, which, to Jeske, seems backward. *See* Diane Jeske, *Perfection, Happiness, and Duties to Self*, 33 AM. PHIL. Q. 263, 263 (1996) (defending the concept of duties to oneself). *But see* Keith Bustos, *Defending a Kantian Conception of Duties to Self and Others*, 42 J. VALUE INQUIRY 241, 251–52 (2008) (critiquing Jeske's elaboration of Kant).

deceive. Duties to oneself are duties of self-care and self-respect. Among such duties are, first, duties to act so as to promote one's rational interests in safety, security, freedom, and opportunity and, second, duties to strive to be the kind of person who acts with self-regard, dignity, and integrity. It would potentially violate duties to the self of the first sort to, for example, make oneself ill through easily avoidable medical neglect and would violate duties of the second sort to waste the bulk of one's time on trivial or demeaning pursuits.

The Kantian-flavored perspective I embrace with respect to duties to oneself is far from universal among moralist theorists. Indeed, many prominent philosophers flatly reject the notion that anyone has a duty to himself or to herself. The philosopher Marcus G. Singer rejected the idea as logically untenable.[48] Kurt Baier called it "absurd," as Lara Denis has pointed out, while also pointing out that several other major philosophers—Aristotle, F.H. Bradley, and Bernard Williams—did not mention the idea of duties to oneself at all.[49]

I take solace, however, in the fact that many philosophers do subscribe to the concept of duties to oneself and have mounted defenses.[50] But because there is disagreement and because I want to apply the concept to a new area of moral life and public policy, it seems appropriate that I should engage the philosophic debates to the extent it makes sense for a lawyer to do so, articulating reasons for embracing the notion of duties to oneself in the face of detractors.

A. Is Morality Only Other-Regarding?

The Kantian tradition notwithstanding, the idea that there are only or primarily duties to others has been described as an "axiom" of Anglo–American Philosophy.[51] On this idea, the ethics we embrace are presumed

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48. *See e.g.* Marcus G. Singer, *On Duties to Oneself*, 69 ETHICS 202, 202 (1959) [hereinafter Singer, *On Duties to Oneself*] ("[I]t is actually impossible . . . for there to be any duties to oneself. . . ."); *accord* Marcus G. Singer, *Duties and Duties to Oneself*, 73 ETHICS 133, 142 (1963) [hereinafter Singer, *Duties and Duties to Oneself*].

49. Lara Denis, *Kant's Ethics and Duties to Oneself*, 78 PAC. PHIL. Q. 321, 321 (1997) (citing KURT BAIER, THE MORAL POINT OF VIEW: A RATIONAL BASIS OF ETHICS 215, 231 (1958)).

50. *See, e.g.*, LARA DENIS, MORAL SELF-REGARD, *supra* note 39, at 225–30 (elaborating on duties to self). *See also* Bustos, *supra* note 47; Paul D. Eisenberg, *Duties to Oneself: A New Defense Sketched*, 20 REV. METAPHYSICS 602 (1967) [hereinafter Eisenberg, *A New Defense*] (arguing that self-deception that leads to non-fulfillment of a moral duty can represent violating a duty one has to oneself); Daniel Kading, *Are There Really "No Duties to Oneself"?*, 70 ETHICS 155, 155 (1960); Mary Mothersill, *Professor Wick on Duties to Oneself*, 71 ETHICS 205, 205, 208 (1961).

51. Joan Straumanis, *Duties to Oneself: An Ethical Basis for Self-Liberation?*, 15 J. SOC. PHIL. 1 (1984) (arguing that what look like women's duties to themselves are duties not to their families or themselves but to other similarly situated subordinated persons and their oppressors to pursue self-enhancement).

social and other-regarding.[52] It is wrong to injure other people, but when it comes to yourself, either (1) whatever goes, goes—sloth, willful ignorance, sexual degradation, drug abuse,[53] even suicide—or (2) whatever goes, does not go to the extent that it violates the moral interests of others to whom you owe duties of care and respect.[54] One's actions may be stupid, imprudent, unwise, self-defeating, and so on, but not morally wrong in the special sense as violative of any moral duties to oneself.

Consistent with the denial of a robust set of non-derivative, first-order duties to oneself may be the postulation of derivative, second-order duties respecting oneself implied by first-order duties to others. We might think of parents as having second-order duties to take care of themselves so they can comply with first-order duties to take care of their children. Lifeguards at the beach may have a second-order duty to remain physically fit so that they are prepared for the toughest acts of first-order dutiful ocean rescue. Applied to privacy, in order for there to be second-order duties to protect one's own privacy as a duty of self-care and respect, we would need to identify a first-order duty whose performance it furthers. Perhaps I have a moral duty to protect my online data only because if I do not, secrets and sensitive data about my friends and family I am morally bound to protect would be disclosed to their detriment.

B. Can Morality Be Self-Regarding?

The view contrary to the axiom of moral philosophy that duties are other-regarding only is strongly associated with Kantian ethicists and interpretations of the writings of Immanuel Kant.[55] As previously explained, Kant maintained that persons have duties to themselves.[56] But the notion is far from clear-cut, since, as with many of Kant's most central ideas, "rather than shedding light on [the concept of duties to oneself, he] puts it under a cloud."[57] The allure and repulsion of the concept has led to a vast exegetical literature among Kantian scholars and moral philosophers.[58]

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52. A "sub-axiom" of the view might be an anti-paternalism ethic and even libertarianism.

53. *Cf.* Paul Smith, *Drugs, Morality and the Law*, 19 J. APPLIED PHIL. 233, 238 (2002) (assessing whether there is a duty to oneself not to use illegal drugs like ecstasy, heroin, or cocaine that might ground legal paternalism or legal moralism in drug laws).

54. *Id.* at 233.

55. *Cf.* Straumanis, *supra* note 51, at 5 (noting that it is "easy to justify" duties to self on Kantian premises).

56. *See generally* DENIS, MORAL SELF-REGARD, *supra* note 39.

57. Andrews Reath, *Self-Legislation and Duties to Oneself*, *in* KANT'S METAPHYSICS OF MORALS: INTERPRETATIVE ESSAYS 349, 350 (Mark Timons ed., 2002).

58. DENIS, MORAL SELF-REGARD, *supra* note 39; Eisenberg, *A New Defense*, *supra* note 50, at 602; Paul D. Eisenberg, *Duties to Oneself and the Concept of Morality*, 11 INQUIRY 129, 129–33 (1968); Jeske, *supra* note 47, at 263–64; George I. Mavrodes, Jan Narveson, & J.W. Meiland, *Duties to*

Policy and legal implications may attach to whether we think we can ascribe duties to oneself and hold people accountable for failure to perform them.[59]

Kant famously argued that we ought to treat humanity, whether in our own persons or the person of others, always as an end in itself, never merely as means.[60] As one commentator has put it: "[H]ow one treats oneself is as much a moral question as how one treats others."[61] Commentators have argued that Kant understood duties to self as logically and morally prior to duties to others, the *sine qua non*, the foundation of duties to others.[62]

The self-regarding duties, like the other-regarding duties Kant ascribes, are not merely matters of utility, happiness, or prudence. They are matters of respect for the dignity of rational, autonomous human persons. Duties to oneself relate to the mandates of respect for our autonomy and rationality. These mandates include self-respect and entail a degree of self-esteem. For Kantians, our duties include the duty "constantly" to perfect our humanity and characters.[63]

A Kantian argument from the idea of duties to self against using drugs[64] might be that drug use undermines one's rationality and

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Oneself, 24 ANALYSIS 165, 165–67 (1964); Margaret Paton, *A Reconsideration of Kant's Treatment of Duties to Oneself*, 40 PHIL. Q. 222, 222–23 (1990); Nelson Potter, *Duties to Oneself, Motivational Internalism, and Self-Deception in Kant's Ethics*, *in* KANT'S METAPHYSICS OF MORALS: INTERPRETATIVE ESSAYS 371, 371 (Mark Timmons ed., 2002); Reath, *supra* note 57; Rolf Sartorius, *Utilitarianism, Rights, and Duties to Self*, 22 AM. PHIL. Q. 241, 247–48 (1985).

59. Heike Baranzke, *Does Beast Suffering Count for Kant: A Contextual Examination of Section 17 in the Doctrine of Virtue*, 5 ESSAYS PHIL. 1, 3–5 (2004); Ruth F. Chadwick, *The Market for Bodily Parts: Kant and Duties to Oneself*, 6 J. APPLIED PHIL. 129 (1989); Lara Denis, *Animality and Agency: A Kantian Approach to Abortion*, 76 PHIL. & PHENOMENOLOGICAL RES. 117, 117 (2008); Lara Denis, *Kant on the Wrongness of "Unnatural" Sex*, 16 HIST. PHIL. Q. 225, 225–26 (1999); Susan Feldman, *From Occupied Bodies to Pregnant Persons: How Kantian Ethics Should Treat Pregnancy and Abortion*, *in* AUTONOMY AND COMMUNITY: READINGS IN CONTEMPORARY KANTIAN SOCIAL PHILOSOPHY 265, 265 (Jane Kneller & Sidney Axinn eds., 1998); Thomas A. Mappes, *What is Personal Ethics, and Should We be Teaching More of It?*, 11 TEACHING PHIL. 33, 33–35 (1988); Debika Saha, *"Duties to Oneself"—A Reflection*, 27 INDIAN PHIL. Q. 439, 441–43 (2000); Thomas Schramme, *Should We Prevent Non-Therapeutic Mutilation and Extreme Body Modification?*, 22 BIOETHICS 8, 11–12 (2008); Smith, *supra* note 53, at 233; Charles Taliaferro, & Michel Le Gall, *The Great Escape*, *in* CANNABIS: PHILOSOPHY FOR EVERYONE: WHAT WERE WE JUST TALKING ABOUT? 77, 87–88 (Dale Jacquette ed., 2010).

60. KANT, *supra* note 41, at 79–81.

61. Smith, *supra* note 53, at 238.

62. DENIS, MORAL SELF-REGARD, *supra* note 39, at 188–94.

63. James A. Gould, *Kant's Critique of the Golden Rule*, 57 NEW SCHOLASTICISM 115, 115–17 (1983) (interpreting Kant's analysis of duties to the self as set forth in his *Critique of Practical Reason*).

64. *See* Samuel Freeman, *Liberalism, Inalienability, and Rights of Drug Use*, *in* DRUGS AND THE LIMITS OF LIBERALISM: MORAL AND LEGAL ISSUES 110, 114 (Pablo De Greiff ed., 1999) (arguing that liberalism could exclude some conduct on grounds that it permanently destroyed the capacity for rational autonomy and distinguishing permanently from temporarily destroying such capacities).

autonomy.[65] A Kantian argument from the idea of duties to self against publication of sensitive facts about oneself might be that it suggests a lack of self-respect or that it undermines freedom and autonomy by truncating future options or opportunities of the sort that foster autonomy and freedom.

IV. REJECTING PRIVACY AS A DUTY TO SELF: TWO TACKS

The claim that there are first-order, non-derivative privacy duties to ourselves might be rejected on the ground that ascribing *privacy* duties fundamentally misunderstands something about the nature of our privacy. Our privacy, the argument goes, is amenable to rights protection but not the protection of self-regarding duties. Other people must respect my privacy, and I must respect other people's privacy, but I don't have to respect my own privacy. For me, as to myself, privacy is optional. Now one might back up this argument from two vantage points. I will call them the conceptual and the libertarian. The conceptual tack denies, along the lines of philosopher Marcus G. Singer,[66] that there are duties to oneself of any coherent kind, including duties to protect one's own privacy. The libertarian tack portrays as moral injustice failing to treat the choices a person makes about her own life as her own acts of rational autonomous decision making, properly immune from moral mandate.

A. The Conceptual Tack

As commentators have pointed out, Kant himself recognized that the concept of duties to oneself generates a kind of contradiction or "antinomy." How can the binder be the bound?[67] Some critics suggest that the idea of a duty to oneself is indeed contradictory and nonsensical because individuals can surely release themselves at will from any duties they owe only to themselves.[68] Kant's resolution of the antinomy is, from the lawyer's perspective, obscure; his interpreters have been left to struggle. But some readers of Kant believe the notion of duties to oneself is indeed a self-contradiction.

Marcus G. Singer argued that rights are claims that can be waived and that rights and duties are correlative.[69] If D has a duty to P, then P has a right against D. But suppose D and P are identical. Now we say P has a

65. Smith, *supra* note 53, at 238.
66. *See supra* note 48 and accompanying text.
67. Reath, *supra* note 57, at 350–51.
68. *Id.* at 351.
69. Singer, *Duties and Duties to Oneself*, *supra* note 48, at 141.

duty to P. But to say that P has a duty to P is also to say that P has a right against P, which amounts to P having a claim against P. But, Singer argued, it makes no sense to say that anyone has a claim against himself. And it makes even less sense to say that the rights against oneself can be waived at will, for that would make the idea of duties to ourselves silly and incoherent. Asks Singer: "What could it mean to have a right or a claim against oneself? (Could one sue oneself in a court of law for return of the money one owes oneself?)"[70]

One way to maneuver around Singer's objection would be to postulate that the self is actually two ontologically distinct entities, a present and future self. When I owe a duty to myself, I am really owing a duty to the future person I will become—the one who stands to benefit from the good reputation, employment, friendships, credit and other advantages that flow from the present self's willingness to limit her disclosures. The philosophical problems attendant to this move to bifurcate the self render it unattractive as the main response to Singer, if avoidable. So, I set it aside.

Singer assumes without arguing that all moral rights are claims that can be waived and that are correlative to duties. Singer's critics have suggested,[71] and I agree, that he conflated moral and legal conceptions of morality, ignoring aspects of the moral point of view that cannot be reduced to rights and claims.[72] Moreover, it is by no means clear that all rights should be understood as claims that can be waived in the first place.[73]

There is a second problem. Singer's position requires him to explain the common use of the expression, "I owe it to myself to do X." Why do we talk this way? Are we not presupposing duties to ourselves? The idea of duties to self is common and entrenched in whole genres of discourse. An example advanced by Joan Straumanis is the genre of fiction in which all-suffering female characters set aside apparent duties to family in order to comply with felt duties to themselves.[74] They set out to make a change, to "do something for themselves"—to behave in self-enhancing ways, such as seeking independence, education, a craft, a job, a career.[75]

Singer suggests that when we say, "we owe X to ourselves," we do not mean what we say. He suggests that such familiar statements are not literal, that what they really mean is that "I have a right to, am allowed to, and am

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70. Singer, *On Duties to Oneself*, *supra* note 48, at 202.

71. Singer sought to answer his critics. Singer, *Duties and Duties to Oneself*, *supra* note 48.

72. *See* Warner Wick, *More About Duties to Oneself*, 70 ETHICS 158 (1960); Warner Wick, *Still More About Duties to Oneself*, 71 ETHICS 213, 213 (1961) (discussing that being a moral person means doing certain things and doing them for the right sorts of reasons and in the right sort of spirit).

73. *See, e.g.*, LEO KATZ, WHY THE LAW IS SO PERVERSE 55 (2011) (arguing that recognizing claims does not settle questions of waiver).

74. Straumanis, *supra* note 51, at 1.

75. *Id.*

determined to do X."[76] Or they mean that "I think it would be imprudent or foolish not to do X."[77] Because Singer interprets "duty to self" talk as pragmatic talk about self-interests, he claims the entire notion of duties to the self confuses morality with prudence. Figures of speech abound in language. But in the case of statements about duties to oneself, why suppose we do not mean exactly what we say? A moral theory should explain rather than discount inconvenient moral discourse. What needs explaining is the belief some moral agents have that, in addition to prudence and self-interest, they are ethically bound to act in a certain way with regard to their own lives.

Singer offers a response to the objection that his view is inconsistent with the common notion that people have a duty to preserve their own lives and develop their own talents. He argues that such duties are not well understood as duties to oneself.[78] They are best understood as duties owed to others who suffer if we fail to live and flourish.[79] They are, in effect, second-order duties to others that imply derivative responsibilities. A Kantian counterview invites us to see that each person's flourishing matters and that each moral agent's humanity has equal worth and merits moral regard. We are more than a tool for others' flourishing. We are agents and beneficiaries of our own flourishing.

Singer further argues that the recognition of vices and bad character traits in no way commits one to the notion of duties to oneself. The reason one should not be lazy or deceitful or a chain smoker is both that these habits and traits may be harmful to society and that they are not in one's prudent self-interest.[80] Quoting John Stuart Mill, "Self-regarding faults . . . are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness."[81] While bad habits and poor character do have prudential and other-regarding consequences, it does not follow that they do not have self-regarding moral consequences as well.

Mill's words need to be understood in context. Mill's intent in distinguishing "wickedness" from "self-regarding faults" was to persuade readers accustomed to thinking that "wickedness" is an automatic ground for civilized Christian society to step in and take charge of people's lives instead to embrace the contingent utility of individual liberty. Once it is grasped that public regulation is not usually and necessarily the best (utility maximizing) response to self-regarding fault, there is no need to set self-

76. Singer, *On Duties to Oneself*, *supra* note 48, at 203.
77. *Id.*
78. *Id.* at 204.
79. *Id.*
80. *Id.* at 205.
81. *Id.*

regarding faults outside bounds of ethical discourse. Self-regarding faults may or may not amount to failure of individuals to do what utility demands. A utilitarian could consistently hold that the principle of utility obligates persons to act in certain ways with respect to others and in certain ways with respect to themselves, both in pursuit of the greatest happiness for the greatest number. Toward justifying substantial control over our own lives, Mill argues that the individual is usually the ideal arbiter of his own good because he is generally in the best position to ascertain what will further his own good. This epistemological assumption is completely consistent with a utilitarian interpretation of duties to oneself as duties to do, regarding one's own life and interests, what the principle of utility demands. A person could be ascribed a duty to protect information about herself from disclosure for the sake of her own happiness, because her own happiness is part of the utilitarian calculus, too.

B. The Libertarian Rejection

Introducing John Stuart Mill brings me to a very different sort of reason one might have for rejecting privacy protection as a duty to oneself. Political theorists traditionally describe as libertarians those who take personal responsibility and the free choices of individuals to be of paramount importance to moral justice. The moral position I am about to outline understands privacy in a libertarian fashion as a strongly, if not entirely, personal matter, as follows. There are moral duties. Moral duties include duties to others *and may include* duties to self. However, among duties to self there surely is no duty to protect one's own privacy. Given ideals of human freedom, privacy is not the sort of thing that could be obligatory. Privacy is purely personal. Privacy could be obligatory but is not because, in our (free) world, privacy is a take-it-or-leave-it condition/value, or in our (free, interdependent) world, publicity and disclosure are superior to privacy. If a person chooses to protect his or her privacy, that is fine and dandy. It is never morally wrong or unethical for an individual to choose privacy, other than where doing so violates someone else's rights. By the same token, if a person chooses publication and sharing, living a transparent life in which he or she freely shares information about what he or she does, says, and thinks, that is nearly always fine and dandy too. It is not prima facie morally wrong or unethical to choose publicity over privacy.

A libertarian might agree with Singer and maintain that duties to oneself do not make sense. Consistently, such a libertarian would claim that there is no duty to protect one's own privacy. Yet, while denying a duty to protect one's own privacy (because of something about privacy), a libertarian might posit duties to or duties regarding oneself of other sorts,

such as the sort egoists are famous for: prima facie duties to preserve one's life and aggressively to pursue one's own interests.

The libertarian finds the protection of privacy to be an unsuitable basis for the ascription of rights of self-care and self-respect. People don't have a duty to protect their privacy (whether or not they have other duties of self-care or self-respect). Some other moral goods may be inalienable—life and basic liberty, for example. Privacy, though, is inherently a matter of choice. Accordingly, the libertarian continues, it would likely be wrong for persons or governments to unduly constrain or coerce the privacy choices of competent adult individuals. Public policy should be premised on the principals that government should protect privacy as it protects ordinary liberties and that individuals should be free to waive any such protections should they not wish them.

Suppose a privacy libertarian were presented with the following realistic scenarios: (1) the thirty-five-year-old who publishes an opinion editorial in a mass-circulated newspaper critical of the administration's economic policies and in it reveals his good college grades, paltry current income, and the banks owed money for college loans and a condominium purchase, (2) the man or woman who discusses the details of an ugly divorce with any coworker who will listen, (3) the breast cancer patient who announces her diagnosis on a popular social networking vehicle and then, after a partial mastectomy, uploads "before and after" photographs of her affected breasts, and (4) the prominent man or woman who opts to have his whole genome sequenced and made public for use by researchers and encourages others to do the same. The privacy libertarian would say that none of the disclosures in these or similar cases involving educational, financial, sexual, interpersonal, or medical information amounts to an unethical or morally wrong act on the part of the discloser. The disclosures are personal choices that may involve risk, bad judgment, or bad taste but implicate no violations of any duties persons have to themselves (even if they may violate duties they have to others whose information is disclosed as an incident).[82]

The conceptual and the libertarian rejection of privacy as a duty to or regarding ourselves is consistent with the recognition of *prudential* grounds for safeguarding our own privacy so as to protect ourselves from the reputational, financial, or other harm that occurs when we live in the public eye or when our enemies or our well-meaning friends use otherwise secret information against us. In this vein, one could cite, as I have, a passage from the diary of John Adams. In 1770, the patriot urged that we protect

82. Disclosing my financial status also discloses my children's and spouse's financial statuses. Disclosing my marital problems also discloses my spouse's marital problems. Disclosing my genome also partly or wholly discloses my biological relatives' genomes.

ourselves from "damage, danger and confusion," and "loss, disgrace or mortification," by the policy of shielding "our sentiments, actions, desires, and resolutions."[83] It is open to a privacy libertarian to insist that Adams was wrong or that he was right as a practical matter for the eighteenth century, not for the twenty-first.

Perhaps I am overstating the strength of the libertarian threat. The moral case I would ultimately make for protecting my own privacy is not just about what I may owe myself, it is also about how my choices may harm others—the relevance of which no moral libertarian can ignore. Hence, a sufficient response to the libertarian might be to point out the negative externalities associated with individuals choosing to disregard their own privacy. Indeed, libertarians must recognize the possibility that recklessness and carelessness about one's own privacy can have adverse consequences for others. I may have an obligation to safeguard my own privacy because, if I don't, I contribute to methods of business (e.g., persistently weak privacy policies) and lines of business (e.g. data mining) that seriously harm the interests of others. There are facts to excavate in mounting this response to privacy libertarians and concerns about public choice that I cannot delve into here.[84]

C. "No Moral Duty" Perspectives

As we can see from the foregoing discussion, there are several negative positions one might take respecting whether information privacy protection is a duty to oneself, including these:

(1) *No moral duty to or regarding oneself.* There are no moral duties to oneself or regarding oneself, and therefore, no duty to protect one's own privacy. We may (or may not) have reasons of prudence and self-interest to protect our own privacy.
(2) *No moral privacy protection duty.* There are moral duties to oneself, but they do not include a duty to protect one's own informational privacy. We may (or may not) have reasons of prudence and self-interest to protect our own privacy.
(3) *No first-order moral duty to or regarding oneself.* There are no first-order moral duties to oneself, and therefore no such duty to protect one's own privacy, but there are first-order duties to

83. ALLEN, UNPOPULAR PRIVACY, *supra* note 3, at 195.

84. *See* Lior Strahilevitz, *Toward a Positive Theory of Privacy Law*, 126 HARV. L. REV. (forthcoming 2013) (using median voter and other public choice analytics to describe the distributional effects of privacy law). See also my response, Anita L. Allen, *Privacy Law: Positive Theory and Normative Practice*, 126 HARV. L. REV. F. (forthcoming 2013).

others that may entail derivative second-order duties to protect one's own privacy.

(4) *Prudence Only.* We may have reasons of prudence and self-interest to protect our own privacy, and commonly do. There are no moral duties to oneself, and therefore no duty to protect one's own privacy. Nor is there any primary duty to others that entails a derivative duty to protect one's own privacy.

(5) *No Reason to Protect.* There are no general reasons of prudence and self-interest to protect one's own privacy. There are no moral duties to oneself, and therefore no duty to protect one's own privacy. Nor is there any primary duty to others that entails a derivative duty to protect one's own privacy.

I reject 1–5 above and subscribe to duties to oneself as an obligation to act in ways that protect one's welfare and promote self-respect. Moreover, I believe that among our duties to ourselves are duties of privacy protection. We ought—in the ethical sense—to protect our own privacy. I have not in this lecture exhausted the full analysis that ascriptions of privacy responsibilities require. I have, however, pointed the direction toward an expanded agenda of theorizing about the ethics of privacy in the information society's Age of Revelation.

D. "Some Moral Duty" Perspectives

Privacy is a requirement of our freedom, our dignity, and our good character. It is a foundational good, suitable for enshrining as a fundamental human right.[85] In my view, people do indeed have a moral or ethical obligation to protect their own privacy (the same way they have a moral or ethical obligation not to lie, cheat, or steal) where privacy is understood as conditions of partial or complete observational and informational inaccessibility to others. Informational privacy requires limits on disclosure, limits on access, and data security. Favoring privacy over publicity is not a matter of taste alone, like the choice between a white or blue breath mint. On the contrary, there will be situations in which it can be morally imperative to choose privacy and obligatory not to forgo privacy.

85. *E.g.*, The Treaty of Lisbon of the European Union established data protection as a fundamental right. *See* Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, art. 2, Dec. 13, 2007, 2007 O.J. C 306/1, at 52 ("Everyone has the right to the protection of personal data concerning them.").

When Congressman Weiner included suggestive pictures in a Twitter message sent to a virtual stranger met online,[86] he violated his moral duty to himself to protect his own privacy as a matter of self-care and self-respect. I also believe there are occasions when one is obligated to choose publicity about oneself over privacy. One may have an obligation to disclose one's sexually transmitted infection to one's lovers out of other-regarding care and respect. But information privacy appears to have the weighty status of a presumptive, essential, foundational moral good for persons, whereas publicity might not, at least not in a strictly analogous respect. (This is another philosophical question worthy of careful probing—is privacy or publicity the default value, or perhaps are they on equal prima facie footing?)

We should make a habit and virtue of protecting our own privacy.[87] Duties to protect one's own privacy can be articulated in admixtures of deontological, utilitarian, and aretaic frameworks, to name the most routinely discussed. The duty to protect one's own privacy is akin to a duty to promote the happiness, autonomy, and character of one's current and future self.[88] (I note that Kant himself did not maintain that individuals have a duty to promote their own happiness, as I would.[89]) A modern deontological morality might understand privacies of modesty and reserve as modes of self-esteem, self-respect, or spirituality. An aretaic or perfectionist morality might treat a degree of modesty and reserve as favorable character traits conducive to the best life. Imagine a man with colon cancer who tells his coworkers in a limited distribution e-mail that he has colon cancer and is about to take some time off from work to begin treatment. Such a sensitive disclosure is not one that I would characterize as unethical. But now imagine that this same man e-mails, unsolicited, to his same coworkers a detailed electronic diary about his cancer that includes photographs of his surgical wounds, MRIs, and X rays, along with emotional accounts of his feeling before, during, and after months of chemotherapy, radiation, and recovery. Now we have "oversharing" that raises ethical concerns. Why? Because of the discomfort he causes others, but also, critically, for the damage to his own reputation, his loss of dignity, and his departure from good judgment and temperate character.

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86. Ashley Parker, *Congressman, Sharp Voice on Twitter, Finds It Can Cut 2 Ways*, N.Y. TIMES (May 30, 2011), http://www.nytimes.com/2011/05/31/nyregion/for-rep-anthony-weiner-twitter-has-double-edge.html.

87. ALLEN, UNPOPULAR PRIVACY, *supra* note 3, at 195.

88. *See* Jeske, *supra* note 47 (employing a Kant-inspired analysis of a duty to promote the perfection of others, a duty to promote the happiness of only our own intimates such as our friends and family members, and a duty to promote the happiness of our future selves).

89. *See id.* at 265.

To provide another example of virtue-ethics grounds for keeping information about oneself private, in *Unpopular Privacy* I referred to a well-known passage from the book of *Matthew* in the Christian Bible commending secrecy concerning our acts of charity, prayers, and piety.[90] What would otherwise be pious virtue devolves into approval-seeking performance when flamboyantly disclosed to others. It seems to take something away from the good of what we do if we do it primarily in public spaces to score points with others. The culture of disclosure and self-disclosure that recognizes no meaningful limit to showing off and exhibitionism is ethically flawed, whatever its practical rewards. And the limits prescribed may be moral limits on one's own conduct properly viewed as duties to self or second-order duties to self, implied by first-order duties to others.

V. CONCLUSION

Toward concluding, I should emphasize my intention to avoid two implications: the implication that people have a duty to do the impossible and the implication that personal responsibility for one's own privacy precludes government and corporate responsibility for privacy protection. There are practical limits to how much people can do to protect their own privacy. Many of us are not sophisticated about the use of electronic technologies or the data gathering practices that are now commonplace. Some of us cannot avoid cultural and economic pressures to engage in transactions that result in information disclosures. As individuals we have limited ability to negotiate with cloud service providers, internet browser providers, telecommunications carriers, app developers, and the government over privacy-related "terms and conditions." Protecting our information privacy is hard. But we are not completely helpless. We can disclose less or differently. That said, nothing I am arguing here should be interpreted as letting Big Data or government or others off the hook. As I stated in my introduction, I am suggesting a new, richer way to think about the moral relationship of consumers to business and government—as partnerships in ethical goodness.

If moral philosophers can tell lawyers and policy makers what we must and may do, we have to take on the very significant and tedious challenge of listening to what they say. Like many normative philosophical questions affecting public policy, when taken seriously, the question I have presented here is difficult to answer, and answers difficult to defend.

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90. ALLEN, UNPOPULAR PRIVACY, *supra* note 3, at 195–96.

A lot depends, in the first instance, on how one understands the concepts of privacy and moral or ethical goodness. But, definitional issues aside, it is clear that, with respect to a variety of contexts, points of view favoring privacy clash with points of view favoring publicity; and among the philosophical questions implicated by these perspectival differences is whether and when individuals may have a moral obligation to favor their own privacy over publicity about themselves, or, in the alternative, publicity about themselves over their own privacy.