

Introduction

This book evolved from my effort to relate three areas of personal and professional interest: privacy, social freedom, and human social nature. First is privacy. When I began writing about privacy – at the time, I thought of it as writing about intimacy – I was convinced that there are central domains of human social and moral life that are ill-suited to being characterized by any of the standard competing moral and legal theories.¹ In an early essay, I argued that properly understanding the moral dimensions of parent–child relationships requires us to recognize the limits of both utilitarian and rights-centered autonomy-promoting approaches. I still believe this.

My concern with privacy in this book is not focused primarily on the claims of privacy that can be made against governments. Rather, I aim to understand the dimensions of privacy that arise in our social encounters. I argue that privacy in the contexts of our social relations protects us from social overreaching – limits the control of others over our lives. Understanding how privacy works in the social context is more complicated than understanding how privacy works in the governmental context. One reason for this difference is that immunity from certain forms of social control typically is not a blanket prohibition directed against all others but is selectively directed. Appreciating this difference will provide some insight into the debate over whether so-called life-choice issues – issues of birth control, including abortion;

Introduction

sexual orientation; use of recreational drugs; and so forth – are properly categorized as autonomy or privacy issues.

In addition to offering an analysis of privacy in the social context, I offer some historical and speculative material that situates privacy in a social process. I believe that we better understand concepts when we see their historical roles and their web of relationships in diverse settings. Rather than leading to relativism, this approach deepens our grasp of the importance of privacy in our own context.

A second interest pursued in this book is social freedom. Although the political and legal approaches to privacy have been illuminating and important, they have omitted an especially important dimension of privacy: the form and function of privacy in promoting *social* freedom. Clearly, we are all concerned with the encroachment of the state into people's private lives; but, equally clearly, we are ever mindful of this threat. With varying degrees of success, we continually interpret our constitutions and design our laws to protect people from governmental overreaching. We expend much effort in defining the contours of overreaching and in framing institutional defenses and remedies.

Yet this other domain, the social domain in which privacy plays a critical role, remains philosophically unexplored despite being central to our everyday experiences. We cannot take for granted that the sorts of strategies and analyses that are appropriate in the political domain are also appropriate in the social domain. The presupposition that the domains are the same or close enough to be treated as if they were the same represents the extent to which privacy in the social context is conceived in the literature. John Stuart Mill wrote his great essay *On Liberty* to change public consciousness in ways that would better protect people from *social* overreaching. He was concerned that we are *more* vulnerable to the insidious control of other citizens than we are to the tyrannical impulses of government. Yet present-day uses of the essay focus on the relatively brief discussion Mill devotes to governments and leave unexplored what Mill took to be most important. To my knowledge, there is no recent evaluation

Introduction

of Mill's approach to the primary problem he addresses – protecting people from *social* overreaching – that does not simply assume that protecting people from social overreaching is the same problem and requires the same solutions as protecting people from governmental overreaching. I aim to correct this by focusing interest on conditions for social freedom.

In the process of focusing on social freedom, I suggest that our usual approach toward human susceptibility to social influence is completely misguided and unrealistic. Philosophers are fond of telling us that people are free, or act autonomously, only to the extent that they judge and act on reasons that are issue-relevant. Reasons are issue-relevant when they exclude doing or believing things because that is what others expect of one, except in special cases that involve conventions and coordination. More conditions are required for freedom, but this one of social independence is necessary. It follows that when we act because of social pressures, or because we want to conform to what we see around us, we are less than free, less than rational, less than autonomous. This outlook is misguided both about what it is reasonable to expect of individuals and about the conditions of social freedom. Much of what is most important about our life would be lost, would be inaccessible to us, were we uninfluenced – unpressured, if you will – by what we see around us. Most, if not all, of our effectiveness as social agents would be undermined by the elimination of the kinds of pressures and influences that philosophers in the analytic tradition treat as rationally corrupting. My reasoning for this claim can be summarized as follows: Most of our protections from a monolithic social and political tyranny depend on participation in associations. The survival and effectiveness of these associations presuppose the availability of forces to bring about conformity with group norms – forces such as loyalty to group participants, methods, and ends. Yet these very forces that are central to group life and social effectiveness are deemed unbecoming in several of the analytic philosophical circles.

Introduction

This brings me to my third interest: human nature. People do not function generally in the way philosophers, especially those concerned with ethics and social and legal philosophy, suggest or presuppose. One representation of people the most distinguished and inspired writing portrays is that of cognitively and morally autonomous beings who are able to sort out issues for themselves and are responsible for doing so. This autonomy is expressed in the principle that one should judge and act only on the basis of reasons that a fully reasonable and rational person would consider relevant. The reference to reasons a fully reasonable and rational person would consider reflects the position that morality is a type of rationality, a rationality that can be explicated without reference to a particular culture.² The influence of others or of culture generally, except when this influence presents arguments for rational evaluation, is not just worrisome but generally is considered inappropriate. Standard treatments suggest that people should not be susceptible to nonrational appeals by others.

Observed patterns of failure to live up to this standard of rationality are not thought to impugn the legitimacy of the expectation that people behave rationally. The expectation is regarded as an ideal; and, it is stressed, patterns of failings do not undermine ideals. Ironically, many philosophers regard economic or decision-theoretic models of rationality as misguided for the kinds of reasons that they treat as irrelevant in evaluating the adequacy of these moral ideals. Let me explain. Models of economic rationality – models that are extended to all decision areas through the device of utilities – purport to be both roughly descriptive and precisely normative. Why should a proponent of this model, particularly one who stresses the normative dimension of the model, feel threatened by being shown that people characteristically judge differently from the way that the theory prescribes? The answer is that these models omit too much of what is humanly important. These omissions disqualify the theories, both normatively and descriptively. They cannot be trusted as intuition-displacing algorithms of action. The disparity

Introduction

between ordinary thought and the outcomes prescribed by the models is seen to reflect badly on the models. I believe the same is true of moral theory.³ Standard presuppositions about human aims and competences are so misguided as to be relegated to the same questionable status as the economic models just discussed.⁴

My criticism of the typical models of human nature is that they are oblivious of our existence as cultural beings and discordant with empirical discoveries in social and cognitive psychology. Seeking remedies for the blindness and discordance just cited requires efforts to coordinate empirical and interpretive responses. Recently, there has been a convergence in cognitive discoveries and theories that suggests that any plausible model of the brain would have to employ various strategies or heuristics, fallible shortcuts, to accomplish its multifarious tasks. From cues about how we work, we gain insight about what we are like, what we seek, and what we can do to achieve our goals. In turn, this insight portrays some things about the structure and limitations of human nature that moral theories ignore to their peril.

An aspect of the structure and limits of human nature that tends to be ignored by moral theory is that we cannot adequately understand human moral nature by disregarding our cultural dependencies and our social vulnerabilities. I construe moral philosophy as aimed at understanding our social character rather than as establishing fortifications against it in the name of rationality and autonomy.

A major tradition of moral theory generally sees cultural susceptibilities and socializing tendencies as standing in the way of moral understanding, moral abilities, and moral fulfillment in autonomous living. I propose an understanding of moral philosophy that seeks to integrate, rather than exclude, our experience as socially dependent beings. An important aspect of this understanding is showing that being culturally embedded is not the same as ritually and unreflectively mimicking whatever others do. Cultural embeddedness allows more subtlety than this equation suggests. We have no reason whatsoever to think that those who are

Introduction

culturally sensitive are more disposed to morally outrageous conduct than those who are oblivious of cultural norms. Indeed, we have every reason to think otherwise.

Establishing an alternative focus for moral philosophy will promote appreciation of the importance of privacy as a social category. The following steps help explain this connection between the redirection of moral theory and an improved understanding of privacy. Because of the sort of cognitive and emotional system we are, we cannot be the rational and autonomous beings envisioned in so much philosophical posturing. In fact, it is our dependence on others – our cognitive, emotional, cultural, and material dependence – that accounts for most of our moral qualities. (It can do this and, at the same time, account for most of our vices.) Our dependence on others also accounts for most of what we are and can hope to become. First we must see this dependence as at least partly a strength. Our disposition to adopt rules and roles by which we share life may provide the basis for morality in a way far different from that suggested by the dominant moral theories – contractarian or consequentialist. Being susceptible to what others think and to how they act is a feature not to be extinguished but to be nurtured in a controlled way.

Our susceptibility to others is a prime and salutary feature of being human. But it also threatens us, which is why privacy comes back into play. In different historical settings, and in different contexts within one historical setting, different levels of susceptibility to others are appropriate. The practice of privacy, not as a right but as a system of nuanced social norms, modulates the effectiveness of social control over an individual. Recognition of the constructive role of social influence and social pressure forces us to concede that people are influenced appropriately by factors beyond those generally sanctioned in moral theory and philosophy. We cannot substitute for the sorts of judgment of which we are capable the sort of rational judgment advocated in liberal theories and remain socially, morally, practically, and intellectually competent beings. It is good, in sum, that we are

Introduction

subject to forces and pressures we do not monitor and judge. It is good that we are driven to be like others and care what they think about how we behave and about what we are like. It is good that we accept much that we cannot defend, if challenged, and to that extent act heteronomously.

In various settings, different levels of self-direction are appropriate. We use standards of social privacy both to acknowledge the point and to modulate the influence of informal means of social control.

Privacy protects social freedom by limiting scrutiny by others and the control some of them have over our lives. Yet we must search for an interpretation of social freedom that is consistent with what we know about human cognitive and motivational tendencies and illuminates the fundamental role freedom plays. Furthermore, and critically, our interpretation of social freedom should be cognizant of the opportunities for effective social agency social groups exclusively afford individual participants. Social freedom cannot mean immunity from social influence and pressure. Rather, social freedom is available to the extent that there are options among associative ties, each of which appropriately exploits social forces to maintain coherence and effectiveness for social action. In this respect, social freedom is quite different from political freedom. In some contexts it is appropriate for people to use social control mechanisms to achieve ends where both the ends and means would be illegitimate for the liberal state.

Human nature being what it is, privacy is indispensable in a community that recognizes social freedom as a good, but a restructuring of our philosophical picture of social dynamics is needed to see why this is so. Normative aspects of this restructuring occasion a different representation of the role of moral philosophy.

Admittedly, the association of themes here seems peculiar. In the course of this book, the connections should become clearer. Chapter 1 addresses the meaning and scope of privacy. In that context, I indicate two discrete usages or roles of our notion of privacy that are not differentiated in the

Introduction

burgeoning literature. I also describe the relations between privacy, emotional vulnerability, and morality. This background enables me to resolve the controversy over whether “personal choice” issues such as abortion and birth control are properly characterized as privacy issues. It also enables me to argue that privacy is important largely because of how it facilitates association with people, not independence from people. This approach suggests that the identification of the right to privacy with the right to be left alone is an incomplete and misleading characterization. These latter themes are further developed in Chapter 8. In Chapter 2, I discuss John Stuart Mill’s advocacy of individuality and his account of how various social responses either fostered or frustrated the emergence of individuality. Mill so radically mismeasured humanity that the strategy he thought would lead to our liberation from stifling social forces amplifies our exposure and vulnerability to these forces. He replaced privacy with a confidence in rational independence. In this he erred. His error is instructive because it is shared by so many eminent writers today.

In Chapter 3, I introduce some major contemporary figures in moral, social, and legal philosophy and show that Mill’s legacy extends to them as well. Like Mill’s their confidence in the independence of human judgment obscures central features of moral life. I demonstrate that it is common among philosophers to equate being culturally influenced and being philosophically or morally corrupted. In Chapter 4, I introduce some findings from social psychology to draw a picture of human nature and social judgment that is quite different from that commonly represented in philosophical literature. I show that the standards for properly vindicated rational and moral thought advocated by Mill and his philosophical heirs seem to ignore what we know about human judgment from other sources.

In Chapter 5, I recommend a different orientation for moral and social philosophy, one that is more attuned to our social and cognitive nature than the dominant theories are. I argue here that appropriately we *are* subject to the judgment and

Introduction

pressure of others. Moreover, an understanding of social life that missed this would be missing perhaps the central feature of moral life – the prospect of a culturally enriched, civilized life with others.

In Chapter 6, I advance a social theory that explains why privacy is important and how it functions to protect people in ordinary social contexts, while leaving them open to appropriate levels of social influence and pressure. Here I show how privacy is critical to the aims of social life articulated in the preceding chapter. There emerges a theory of social freedom, which I view not as freedom from social influence as such but as freedom from overreaching social control. People are socially free to the extent that two conditions are met: Their culture provides them with alternative, function-specific associative prospects; and the sorts of social control mechanisms used on these people within their associations are fitting, given the ends of the association.

In Chapter 7, I present a cultural history of privacy to illustrate the point of the distinction in ordinary uses of privacy, and I introduce empirical data for more theoretical claims I make in subsequent chapters.

Using themes developed earlier in the book, I address in Chapter 8 what seems to be a contradiction between the function of the social practice of privacy, on the one hand, and the function of the social practice of gossip, on the other. Whereas privacy seems to restrict access to people, gossip exposes people. I use the discussion of the relationship between privacy and gossip to illustrate how privacy does not function by acting in opposition to social norms but is integrated and interdependent with other social practices. Acknowledging this helps us appreciate how privacy is beneficial for socialization, not something that sets individuals off against others.

In Chapter 9, I introduce the notion of 'spheres of life', relate this to the previous discussion of associative ties, and clarify the connection of spheres of life with moral and social judgment, especially as this judgment concerns privacy. I argue that spheres of life have implicit privacy norms built

Introduction

in, whether these spheres relate to what we consider public or private dimensions of a person's life. It follows that privacy norms relate to public roles as they do to private roles.

Having discussed how privacy norms function in public life to modulate social freedom, I turn in Chapter 10 to discuss how privacy structures private life. Specifically, I examine how morality in private spheres functions differently from morality in public spheres. What emerges from this discussion is the extent to which the contours of morality portrayed as representative in moral theory belong to the branch of morality that regulates public spheres. Because most of our active moral dealings arise in the private domain, the identification of morality with public-sphere morality reflects a misguided emphasis, as well as a biased supply of paradigms for moral thinking generally. Except for a brief epilogue, this discussion ends my elaboration of how reflection on privacy forces us to reexamine human nature and some fundamental tenets of contemporary moral theory.

Some years ago, I attended a series of lectures by Saul Kripke on identity. At one point during this series, he took a rubber band and snapped it. He did this to illustrate simply that the standard philosophical picture of identity of a physical object that requires spatial and temporal contiguity is not inevitably part of our everyday experience. We have no trouble thinking of the rubber band as being one and the same before and after the snap, even though we lose track of its course and stages in between. Wherever it is in between, whether these stages are contiguous or not, and this is something we cannot really tell, these stages are consistent with our principles of identity.

Similarly, much of what I have to say about the philosophical theories I discuss is unassuming and involves points that anyone who is not committed to promoting a theory would find commonplace. There are some simple truths that I believe philosophers have missed. I do little more than point to some of these truths and discuss some of their implications. Dramatic changes in perspective are required to make philosophy reflect these truths accurately.