THE RIGHT TO PRIVACY

THE RIGHT TO PRIVACY

Edited by

Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul

CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,
São Paulo, Delhi, Dubai, Tokyo

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521786218

First published 2000

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

The Right to Privacy / edited by Ellen Frankel Paul,
Fred D. Miller, Jr., and Jeffrey Paul. p. cm.
Includes bibliographical references and index.
ISBN 0-521-78621-5 (pbk.)
1. Privacy, Right of. I. Paul, Ellen Frankel. II. Miller,
Fred Dycus, 1944- . III. Paul, Jeffrey.
JC596 .R54 2000
323.44′8–dc21 00-035665
CIP

ISBN 978-0-521-78621-8 Paperback

Transferred to digital printing 2010

The essays in this book have also been published,
without introduction and index, in the semiannual journal
Social Philosophy & Policy, Volume 17, Number 2,
which is available by subscription.

CONTENTS

INTRODUCTION

The distinction between the public and private spheres of human life is a critical facet of contemporary moral, political, and legal thought. Much recent scholarship has invoked privacy as an important component of individual autonomy and as something essential to the ability of individuals to lead complete and fulfilling lives. However, the protection of one's privacy can interfere with the ability of others to pursue their own projects and with the capacity of the state to achieve collective goals. Developing an acceptable account of the right to privacy—one that provides satisfactory answers to both theoretical and practical questions—has proven to be a vexing problem.

The thirteen essays in this volume examine various aspects of both the right to privacy and the roles that this right plays in moral philosophy, legal theory, and public policy. Some of the essays discuss possible justifications for privacy rights, basing them on classical liberal principles or on considerations of moral pluralism. Other essays criticize prevalent foundational arguments for privacy rights, asserting that for various reasons the existence of a right to privacy as a fundamental right is dubious. Some of the essays examine the role that privacy plays in American constitutional theory, asking how various privacy rights have been justified by the U.S. Supreme Court and how privacy has generally been handled by prevailing methods of constitutional interpretation. Still others assess how privacy considerations affect certain issues in medical ethics, such as the proper extent of access to medical information and the normative status of the right to die.

Privacy rights are invoked in discussions of a vast array of issues, which leads one to wonder what the concept of privacy legitimately covers. Does contemporary usage of the word 'privacy' refer to things that actually are conceptually similar? In the first essay in this volume, "Deconstructing Privacy: And Putting It Back Together Again," Richard A. Epstein examines how consistent the contemporary law of privacy is with principles emanating from the classical liberal tradition. Epstein notes that cases involving privacy concerns fall into two general areas of common law: torts and contracts. With respect to torts, Epstein argues that privacy interests do emerge in considerations of several common law torts, particularly that of trespass. Yet certain actions do not fit cleanly into definitions of these torts. Developing new privacy protections against these actions will infringe upon the abilities of others to do as they wish. Yet if these limitations would lead to greater long-term benefits for all, Epstein claims, they are not inconsistent with a classical liberal approach. Epstein turns to contract law to discuss the privacy interests involved in

consensual relationships. To the extent that freedom of contract provides controls on the transmission of information between consenting parties, the privacy interests protected are compatible with classical liberal principles. However, claims of privacy are often used to undercut the freedom of contract; for example, by limiting the types of information that employers may request from job applicants. Though public opinion may support privacy protections in these instances, Epstein maintains that such extensions of privacy are inconsistent with the sorts of privacy that are legitimately protected under the classical liberal framework. To the extent that one agrees with the principles of this framework, one ought to reject these extensions of privacy protection.

Yet tying privacy rights to classical liberal principles raises a more general problem. If privacy rights are justified via moral or political claims, then successful attacks on those claims will undercut the privacy rights that they support. This has led some advocates of privacy rights to claim that a right to privacy is grounded not in moral or political concerns, but in facts about man's nature as an autonomous agent. In "The Right to Privacy," Lloyd L. Weinreb questions whether autonomy itself can provide a root for privacy rights. He contends that assertions of privacy as a legal right, a natural right, or a civil right are unsatisfactory; invoking a theme also found in Epstein's essay, Weinreb suggests that confusion over privacy's various meanings may be the culprit. In one of its meanings, "the private" serves as a reference to autonomy itself, an essential characteristic of persons. Yet Weinreb argues that privacy, when understood in this way, is not itself a right; rather, it may be said to encompass rights that are normally subsumed under the rubric of liberty. More often, privacy refers to informational privacy, a person's control over disclosures about himself or herself. Various theorists have proposed accounts of informational privacy that link it to autonomy; such theorists argue that this link means that a right of privacy deserves recognition. In response, Weinreb notes that each of these accounts depends upon considerations of social good; none of them shows that a lack of informational privacy changes an individual's status as an autonomous actor. Therefore, each theory fails to show that autonomy requires privacy. Advocates of privacy rights may retreat to claims that a right to privacy is instead dependent upon social conventions. Yet consideration of this conventional right to privacy indicates that its contours do not resemble those of a right per se, but are instead highly dependent upon utilitarian considerations.

R. G. Frey is also critical of various accounts of informational privacy; Frey argues that the right of informational privacy is problematic because it depends, like negative rights generally, on assumptions of a sphere of noninterference. In his essay, "Privacy, Control, and Talk of Rights," Frey describes a basic format that characterizes several negative-rights theories. Rights theorists begin by asserting that some trait or value is essential to our status as agents or persons (self-direction of our lives, for

example). They assert that this sphere requires noninterference, and then they give it a normative gloss, so that infringements upon the sphere may be portrayed as moral wrongs. Finally, rights theorists assert that rights of privacy are necessary to protect this sphere adequately. It is unclear, however, on what grounds we ought to accept the existence of this sphere of noninterference. Frey proceeds to assess several justifications that have been offered for such a sphere. For example, some theorists attempt to justify a sphere of noninterference with arguments based on principles of mutual respect, while others rely on accounts of human flourishing or human agency. However, analysis of these arguments reveals that, for various reasons, they are not successful in grounding the assumption that some sphere of noninterference exists that demands protection. The sorts of reasons that do support respecting a sphere of noninterference, Frey contends, are grounded in prudential/utilitarian concerns. This foundation, however, will not satisfy the rights theorist, because the protections that emerge from such concerns will not be rights that are independent of circumstances; rather, the protections will be subject to tradeoffs in the face of gains in collective well-being. Given these arguments, rights to informational privacy will be difficult to uphold, at least to the extent that they are based on general theories of negative rights. In closing, Frey argues that many of the concerns that give rise to justifications for spheres of noninterference can be adequately addressed by utilitarian perspectives.

Criticism of the philosophical foundations of the right to privacy also emerges from considerations raised by other fields of study. Evolutionary biology, for instance, may play a role in challenging assertions that privacy is ultimately a matter of morality or autonomy. In "Privacy as a Matter of Taste and Right," Alexander Rosenberg notes that "moral social psychologists" argue that privacy is a moral right because privacy is necessary for the expression of emotions and traits—such as love, friendship, and personal integrity—that are considered to have moral value. Yet such emotions and traits exist in societies where there is little or no privacy, suggesting that these accounts cannot be correct. Rosenberg proposes, instead, that a taste for privacy has emerged among humans and infrahumans as an evolutionarily adaptive trait: such a taste may help in the development of institutions and relationships that maximize reproductive fitness. This account provides a ready explanation for differing cultural norms of privacy: societies facing different environmental circumstances will express a generic taste for privacy in different ways. In situations where the economic value of information about others is rising and the costs of obtaining such information are falling, the incentives to obtain such material will increase. In these situations, privacy rights will emerge as a convenient, relatively unobtrusive method to protect ourselves from others. The result of this analysis, of course, is that privacy rights are a matter of prudential interest rather than a right backed by concerns of morality or autonomy. Rosenberg concedes that moral con-

cerns seem to play a role in privacy rights (with respect to privacy of medical information, for example). He notes, however, that humans may have evolved with a predisposition toward recognizing other people's equality of opportunity to pursue their own interests. Privacy rights may be the most efficient tool to realizing this predisposition; privacy can thus be an institution of indirect, instrumental normative force.

The relationship between certain consequentialist moral theories and the right to privacy is the subject of Richard J. Arneson's essay, "Egalitarian Justice versus the Right to Privacy." Arneson begins by noting that our intuitions about the extent to which individuals should be subject to outside interference will influence our choices of moral theories; theories incompatible with our firm opinions on privacy issues ought to be rejected. Though many assert that consequentialism does not take rights—and, thus, a right to privacy—seriously, Arneson argues that certain consequentialist theories are compatible with privacy concerns (understood here as the right to be let alone). In particular, Arneson stresses the possibilities of "responsibility-catering prioritarianism." A form of egalitarianism, responsibility-catering prioritarianism directs that actions should be chosen and policies set so that moral value is maximized; moral value here is a function of individual well-being that gives priority to gains achieved by those who are worse off and by those who have behaved responsibly. This theory, however, faces criticism on several grounds. These range from general arguments against all consequentialist moral theories to arguments directed more specifically at responsibility-catering prioritarianism. Several of these critiques involve concerns about privacy. For instance, opponents of responsibility-catering prioritarianism note that to take agents' responsibility into account, facts about agents' lives will need to be uncovered; this may be quite detrimental to privacy. In response to these concerns, Arneson argues that assessments of moral value, properly understood, take care of these problems. To the extent that privacy plays a role in well-being, a proper assessment under responsibility-catering prioritarianism will incorporate privacy concerns as well as concerns for egalitarian justice.

It may be natural to think of privacy rights as a conclusion that is reached through the application of an accepted moral theory. In "Privacy and Limited Democracy: The Moral Centrality of Persons," H. Tristram Engelhardt, Jr., argues that privacy rights can also be viewed as the product of moral disagreements. Engelhardt observes that our secular moral knowledge is limited; no content-rich moral vision can legitimately claim to draw assent from all citizens. This carries consequences for political authority: given the absence of an accepted moral vision, governments cannot make appeals to moral authority that are based on any such content-rich view. Governmental authority must thus come from the consent of the governed. Rights of privacy, then, serve as recognitions of the limits of governmental authority. Engelhardt contrasts this portrayal of the state

with those under which the state claims to represent a univocal moral vision. Under the latter, spheres of privacy, defined as areas in which individuals are free to pursue their own view of the right and the good, are problematic; spheres of privacy, here, would represent deficient deviations from the moral vision articulated by the state. Analyzing John Rawls's influential work on "public reason"—and, indeed, using it as a paradigmatic example of social democratic approaches to state authority—Engelhardt argues that even univocal accounts of democratic society that seem to allow for pluralism suffer from this problem. In closing, Engelhardt briefly discusses how provisions of the U.S. Constitution, specifically the Ninth Amendment, support a claim that—at least with respect to the United States—political authority is derived from the people's consent rather than from a particular moral vision.

While Engelhardt's discussion of the Constitution's relation to privacy is merely an addendum to his paper, the connections between privacy, the Constitution, and constitutional theory are the centerpiece of the next two essays in this volume. In "Legal Conventionalism in the U.S. Constitutional Law of Privacy," Mark Tushnet examines two lines of Court decisions: those involving reproductive freedom; and those concerning police searches and seizures. From this analysis, he concludes that the Court's idea of privacy finds its roots not in moral or political philosophy, but in what the Court considers to be the shared understandings of the American people. Thus, Tushnet notes, the basis of privacy in U.S. constitutional law is legal conventionalism. Yet legal conventionalism itself is problematic for several reasons. First, it is unclear whether the theory is compatible with theoretical principles—such as majoritarianism and federalism—to which we often profess allegiance. Furthermore, legal conventionalism may not be able to deal adequately with changes in the norms or technologies of a given society. A related set of questions involves the dynamic effects of Court decisions; the shared understandings of the American people may well be shaped by Court decisions themselves, introducing a problem of circularity into the theory's very core. While legal conventionalism may have the resources to deal with some of these problems, Tushnet concludes, it seems that proponents of the theory will ultimately have to look outside of legal conventionalism to find a solid basis for their judgments. This may lead them back to more controversial moral and political theories, an outcome that legal conventionalists had hoped to avoid in the first place.

While Tushnet illustrates a foundational problem with the Court's privacy holdings, the next author turns his attention to the hotly debated issue of constitutional interpretation and what various interpretive techniques reveal about a constitutional right to privacy. In "Privacy and Constitutional Theory," Scott D. Gerber examines the pivotal role that privacy rights play in modern constitutional theory. Gerber performs an exercise in "methodological self-consciousness," that is, he assesses how

theories of proper constitutional interpretation affect theorists' assessments of privacy rights. In succession, Gerber examines how adhering to each of six major approaches to constitutional interpretation—textual, historical, structural, doctrinal, prudential, and ethical—impacts one's views about the constitutional status of privacy rights. Assessing the work of scholars who employ each of these methods, Gerber demonstrates that none of these techniques commits a person to a particular view on privacy rights. Each methodology can affirm or deny the constitutional status of privacy rights, depending upon how each practitioner interprets the evidence that is relevant under his favored approach. Given this methodological ambivalence, Gerber concludes that we must either admit that these interpretive theories are themselves impotent or that, with respect to highly charged issues like privacy rights, the ability of judges and scholars to apply these analytic tools is marred by ideological bias.

David Friedman moves the discussion of privacy from the philosophical and constitutional realms to the practical realm, focusing on people's ability to control access to information about themselves. In his essay, "Privacy and Technology," Friedman begins by assessing several arguments for the economic efficiency of privacy rights. These include arguments involving rent seeking, the efficiency of private markets for information, and protections against government interference. Each of these arguments is problematic, Friedman maintains, which suggests that the case for privacy rights—that is, for making it cheaper for individuals to control information about themselves—is dubious. Yet Friedman notes that these discussions of economic efficiency emphasize the role that technologies play in assessing the suitability of privacy rights, as these technologies affect the costs involved in hiding and collecting information. Following this lead, Friedman proceeds to assess three types of technological innovations. On the one hand, improvements in information processing have made privacy rights weaker by making it easier for organizations to collect data on individuals. On the other hand, developments in encryption—particularly public-key encryption—make it easier for individuals to enjoy a high level of privacy in on-line transactions, yet also allow for the development of cyberspace reputations as well as the benefits that such reputations allow. Finally, advances in surveillance technology, combined with public demands for effective law enforcement, are leading us toward a society in which our "realspace" privacy will be severely restricted. The upshot of these technological changes, Friedman concludes, is that we are moving toward a world where cyberspace will offer a great deal of privacy while realspace will offer very little. Overall, one's level of privacy will be determined by how much of one's life one chooses to spend in each realm.

The last four essays in this volume examine particular venues in which privacy is likely to be an ever-growing concern. In "The Priority of Pri-

vacy for Medical Information," Judith Wagner DeCew begins by noting that protecting the privacy of individuals' medical information is of critical importance to our freedom and independence. DeCew discusses three public policy approaches to protecting medical records. The first alternative involves reliance upon governmental guidelines. Though such a system would establish a presumption of privacy for medical information—and could lead to significant public health advantages—the centralization of records in the hands of a single public agency poses some privacy-related risks. The second approach is corporate self-regulation, in which the private sector would be the major force behind privacy regulations. Ideally, such a system would maximize consumers' choices about the extent of their privacy protection. However, allowing individual companies to implement differing privacy guidelines would lead to inconsistent levels of protection, a serious problem for patients. Finally, DeCew proposes her own "hybrid view" for consideration, which depends upon "dynamic negotiation." Under a dynamic-negotiation system, the default position would be that patients control their own records, and their records only could be released with their permission. This would lead to meaningful dialogue between patients and health care providers, protecting patients' privacy while allowing physicians to get the information that they need. This approach is not unproblematic; for example, problems that typically emerge when attempting to secure informed consent will arise under a dynamic-negotiation system. However, these problems must be weighed against the benefits. Indeed, DeCew concludes, the costs and benefits of each of these three approaches must be carefully considered by public policymakers when they discuss protecting the privacy of medical information.

While DeCew's essay focuses on medical information generally, recent advances in the study of the human genome raise a host of health and privacy issues. Of particular importance from a public policy perspective are the implications of genetic information for the insurance marketplace. A. M. Capron explores these implications in his "Genetics and Insurance: Accessing and Using Private Information." As scientific advances promise greater insight into individuals' genetic makeup, these same advances pose challenges to our capacity to lead self-determined lives. Not only can deterministic views of genetic test results undermine our conceptions of ourselves as the authors of our own lives, but access by others to this information may severely curtail our options. Of particular concern is how access to such information will affect the practices of insurance companies. Capron argues that, for reasons of practicality, principle, and policy, health insurance is unlikely to be affected by the dissemination of genetic testing results. Life insurance, however, is another story. Since life insurance is less essential to ensuring one's well-being than is health insurance, and because life insurance is issued to individuals rather than groups, life insurance companies may face competitive pressures to ob-

tain and use the results of the growing number of genetic tests. Capron proposes that the best solution to this problem at the present state of our knowledge is a "don't ask, do tell" policy. Under such a policy, insurance companies could not mandate that individuals undergo genetic screening, because such data is still too new for us to assess its actuarial significance, and a mandate would tread heavily on privacy interests. Individuals would be free to inform insurance companies—the "do tell" component of the policy—of genetic testing results that demonstrated their luck in not inheriting a gene for a familial genetic disease. However, as an increasing number of validated gene tests become available, insurers should be afforded the option to require applicants to disclose any test information in their possession.

Privacy rights also play a part in some of our most traumatic life-and-death decisions. In "The Right to Privacy and the Right to Die," Tom L. Beauchamp begins by tracing the development of the legal right to refuse life-prolonging treatment. Between the mid-1970s and the early 1990s, courts justified this right by relying on previously established legal rights. Initially, privacy rights were the major source of justification, but liberty rights assumed greater significance in subsequent decisions. More recently, right-to-die issues have taken on the more active form of physician-assisted suicide and voluntary active euthanasia. Once again, legal rights are in dispute. Beauchamp begins his analysis by examining the moral status of a right to request active physician aid-in-dying; moral rights to privacy and liberty will justify these forms of aid-in-dying as well. Though the influential distinction between killing and letting die may seem to provide a moral justification for resisting acceptance of active forms of aid-in-dying, Beauchamp suggests otherwise, claiming that the morality of an act of physician aid-in-dying is determined entirely by the validity of a patient's authorization. Just as a valid refusal of treatment precludes a physician's moral culpability for a patient's death, so too a valid request for aid-in-dying should free a responding physician from culpability. Therefore, while there may be reasons why we ought not legalize active forms of physician aid-in-dying, these reasons can only be sought in the practical consequences of legalization, not in the moral status of the act itself, for privacy and liberty interests allow patients to validly authorize such acts.

The media is another flashpoint for privacy concerns, especially as new technology makes competition ever more cutthroat. Frederick Schauer's contribution to this volume, "Can Public Figures Have Private Lives?" examines how democratic theory interacts with the privacy rights of elected government officials and candidates for public office. Schauer begins by noting that arguments against the release of information about candidates or officials are typically phrased in terms of "irrelevance." Yet if by "relevant information" we mean information that is causally or indicatively related to traits that we want in our public officials, then the range of

information relevant to voting decisions could be quite broad. Under democratic theory, people are thought to have a legitimate interest in knowing those facts that they consider relevant to the qualifications of candidates for public office. This applies not only to information that the majority finds relevant, but also to the informational preferences of minorities. Given the centrality of this right to know in democratic theory, candidates' and officials' abilities to restrict the amount of information about themselves that can be made public is severely circumscribed. In conclusion, Schauer notes that the right of nondisclosure, so often asserted by politicians against the release of embarrassing information, may be something that individuals must surrender when they choose to enter public life, just as they must sacrifice various other autonomy rights.

Privacy rights are an important mechanism by which individuals protect themselves from the prying eyes of others and from the intrusive state. These essays—written from a range of viewpoints by leading philosophers and legal theorists—offer valuable insights into the moral, legal, and public policy implications of these rights.

ACKNOWLEDGMENTS

The editors wish to acknowledge several individuals at the Social Philosophy and Policy Center, Bowling Green State University, who provided invaluable assistance in the preparation of this volume. They include Mary Dilsaver, Terrie Weaver, and Carrie-Ann Biondi.

We wish to thank Executive Manager Kory Swanson, for his tireless administrative support; Publication Specialist Tamara Sharp, for her patient attention to detail; and Managing Editor Matthew Buckley, for editorial assistance above and beyond the call of duty.

CONTRIBUTORS

Richard A. Epstein is James Parker Hall Distinguished Service Professor of Law at the University of Chicago. He is the author of *Forbidden Grounds: The Case against Employment Discrimination Laws* (1992), *Simple Rules for a Complex World* (1995), *Mortal Peril: Our Inalienable Right to Health Care?* (1997), and *Principles for a Free Society: Reconciling Individual Liberty with the Common Good* (1998). He is an editor of the *Journal of Law and Economics* and a member of the American Academy of Arts and Sciences.

Lloyd L. Weinreb is Dane Professor of Law at Harvard Law School, where he has taught since 1965. He teaches and writes in the areas of jurisprudence, moral and political philosophy, criminal law and procedure, and intellectual property. His books include *Denial of Justice* (1977), *Natural Law and Justice* (1987), and *Oedipus at Fenway Park: What Rights Are and Why There Are Any* (1994). He is currently working on a book about the nature of legal reasoning.

R. G. Frey is Professor of Philosophy at Bowling Green State University and a Senior Research Fellow at the Social Philosophy and Policy Center at Bowling Green State University. He has written numerous articles and books in moral and political philosophy, eighteenth-century British moral philosophy, and applied ethics. Most recently, he is the coauthor of *Euthanasia and Physician-Assisted Suicide* (with Gerald Dworkin and Sissela Bok, 1998).

Alexander Rosenberg is Professor of Philosophy at the University of Georgia. He is the author of many books in the philosophy of biology and the philosophy of economics, including *Economics—Mathematical Politics or Science of Diminishing Returns?* (1993) and *Instrumental Biology or the Disunity of Science* (1995). His most recent book is *Darwinism in Philosophy, Social Science, and Policy* (1999). He has received fellowships from the National Science Foundation, the American Council of Learned Societies, and the John Simon Guggenheim Foundation.

Richard J. Arneson is Professor of Philosophy at the University of California at San Diego, where he was department chair from 1992 to 1996. He has held visiting appointments at the California Institute of Technology, University of California at Davis, Yale University, and the Research School of Social Sciences, Australian National University. He writes mainly on social and political philosophy, with an emphasis on contemporary theories of justice.

CONTRIBUTORS

H. Tristram Engelhardt, Jr., is Professor of Medicine at Baylor College of Medicine, Professor of Philosophy at Rice University, and Member of the Center for Medical Ethics and Health Policy at the Baylor College of Medicine. He is the editor of the *Journal of Medicine and Philosophy* and of the book series *Philosophical Studies in Contemporary Culture*. He is also coeditor of the journal *Christian Bioethics: Non-Ecumenical Studies in Medical Morality*, and of the book series *Philosophy and Medicine*. His recent publications include *Bioethics and Secular Humanism* (1991) and *The Foundations of Bioethics*, 2d ed. (1996).

Mark Tushnet is Carmack Waterhouse Professor of Constitutional Law at the Georgetown University Law Center. His books include *Red, White, and Blue: A Critical Analysis of Constitutional Law* (1988), *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961–1991* (1997), and *Taking the Constitution Away From the Courts* (1999). He has written widely in the fields of constitutional law, constitutional theory, and U.S. legal history.

Scott D. Gerber is Senior Research Scholar in Law and Politics at the Social Philosophy and Policy Center at Bowling Green State University. He is the author of *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation* (1995) and *First Principles: The Jurisprudence of Clarence Thomas* (1999), and is also the editor of *Seriatim: The Supreme Court before John Marshall* (1998).

David Friedman is Professor of Law and Professor of Economics at Santa Clara University. His current interests are in the application of economics to law and the implications of new technologies for law, economics, and society. His previous books include *Price Theory: An Intermediate Text*, 2d ed. (1990) and *Hidden Order: The Economics of Everyday Life* (1996). His next book, *Law's Order: What Economics Has to Do with Law and Why It Matters*, is forthcoming from Princeton University Press.

Judith Wagner DeCew is Professor of Philosophy and Associate Dean of the College at Clark University. She has previously taught at the Massachusetts Institute of Technology, and has been a Research Fellow at the Bunting Institute and at Harvard Law School. She is the coeditor of *Theory and Practice* (with Ian Shapiro, 1995) and the author of *In the Pursuit of Privacy: Law, Ethics, and the Rise of Technology* (1997). She is also the Secretary-Treasurer of the American Society for Political and Legal Philosophy.

A. M. Capron holds a University Professorship at the University of Southern California, where he is also Henry W. Bruce Professor of Law and Co-Director of the Pacific Center for Health Policy and Ethics. In addition to serving on the National Bioethics Advisory Committee and the Joint Commission for Accreditation of Healthcare Organizations, Professor Ca-

pron has written widely on the ethical and legal issues raised by developments in molecular genetics.

Tom L. Beauchamp is Professor of Philosophy at Georgetown University and is a Senior Research Scholar at the Kennedy Institute of Ethics. His research interests include applied ethics (particularly biomedical ethics and business ethics) and the history of modern philosophy. He is the coauthor of *A History and Theory of Informed Consent* (with Ruth R. Faden and Nancy M. P. King, 1986) and *Principles of Biomedical Ethics*, 4th ed. (with James F. Childress, 1994). He is also one of three editors of the *Clarendon Hume*, a critical edition of the works of David Hume.

Frederick Schauer is Frank Stanton Professor of the First Amendment and Academic Dean at the John F. Kennedy School of Government, Harvard University. He is the author of *Free Speech: A Philosophical Enquiry* (1982), *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* (1991), and numerous articles on legal and constitutional theory. His work is the subject of Linda Meyer's collection, *Rules and Reasoning: Essays in Honour of Fred Schauer* (1999).