Toward a Political Philosophy of Information

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Abstract

Many of the most pressing issues in information ethics—informational privacy, surveillance, intellectual property, access to information, and the distribution of information resources—can only be addressed at the level of global politics. This paper develops an approach to theorizing about political questions of concern to information ethics. It begins by situating a political philosophy of information within the broader field of ethics and defending a theoretical approach that is practical, person-centered, and pluralistic. The method of dialogic public reason, as articulated by John Rawls and supplemented with insights from Jürgen Habermas, is described and defended. It is argued that dialogic public reason provides a way to justify political principles in a diverse global context. The paper concludes by relating the idea of dialogic public reason to international human rights. The putative human right to intellectual property is criticized on the grounds that it does not pass the test of public reason.

Introduction

Information ethics is the study of normative questions related to the creation, preservation, organization, access, presentation, and control of information; it addresses such concerns as "equity of access to information, intellectual freedom, information privacy and confidentiality, and intellectual property" (Furner, 2010, p. 191). Many of the most pressing issues in information ethics are questions of political philosophy. *Political philosophy* has been defined as "philosophical reflection on how best to arrange our collective life—our political institutions and our social practices" (Miller, 1998).[1] These include the proper extent of state control and regulation of the internet, the proper limits on the power of the state to gather information about citizens and foreign nationals, and the scope and limits

of international intellectual property agreements. However, few theorists working in information ethics explicitly draw on contemporary work in political philosophy.[2] This paper seeks to begin a greater engagement of information ethicists with the questions of political philosophy and the work of political philosophers. The central claim of the paper is that a political philosophy of information should work within the framework of Public Reason, a pluralistic approach to political justification developed by John Rawls and others (Quong, 2013).

The paper begins with a brief introduction to the field of information ethics, situating it within ethics more broadly. After a brief discussion of the sorts of questions that a political philosophy of information would address, I turn to the question of theory choice within ethics. Section 2 briefly surveys a number of ethical theories and argues for a pluralistic approach to ethical theorizing. Section 3 asks how we can develop and justify political principles that apply internationally and cross-culturally. To answer this question, I introduce two key ideas developed by Rawls in his work on political liberalism—"overlapping consensus" and "public reason." While Rawls's theory provides many insights on how agreement on ethical principles can be achieved among people with differing value systems, some of the strictures that he puts on the use of public reason are unnecessary and counterproductive. To solve this problem, I suggest that we look to Jürgen Habermas's theory of *discourse ethics*. Combining Rawls's work on overlapping consensus and public reason with Habermas's discourse leads to a genuinely dialogic conception of public reason. I conclude the section with some reflections on the central role of access to information to the project of dialogic public reason. Section 4 turns to questions of global politics and suggests that human rights can serve as a set of shared principles for a global public reason. To illustrate how public reason might be used to justify or evaluate principles of informational justice, I briefly discuss the justifiability of the human right to intellectual property and argue that as it currently stands, the public justifications of a human right to intellectual property do not pass the test of global public reason.

Ethics: Mapping the Domain

Library and information science (LIS), as its names implies, is a discipline largely focused on the testing of theories, discovery of facts, and development of systems and services. Given this, work on ethics, which focuses on normative questions of *value*, may need some introduction. This section provides a characterization of ethical inquiry and a map of the field of ethics, while pointing out a number of theoretical choices that I will be making in this paper. In this section, I try to make clear that any ethicist must make a number of theoretical choices, and note where other information ethicists may make different choices. The section concludes

with a closer look at questions of political philosophy within information ethics.

Aristotle said that we are rational animals. Whether or not that is true, it is most certainly true that we are *judging* animals. We judge circumstances and we judge our own and other people's behavior, appearance, language, and beliefs. Implicit in many such judgments is an idea of how things not just could, but *should* or *ought* to be. These judgments come in different flavors: there are practical judgments, aesthetic judgments, and moral judgments. A single statement can express a variety of possible judgments. For example, if someone says, "You shouldn't wear such a tight dress," this may express a practical judgment (for example, "You plan to play tennis in it and you don't want something that will restrict your movement"), an aesthetic judgment ("It isn't flattering"), or a moral judgment ("Women should show modesty"). Ethical/moral theory, also called simply *ethics*, is the study of that subclass of judgments and rules we call *moral* judgments.[3]

The moral philosopher does not study these judgments from the outside as linguistic, psychological, or sociological phenomena; instead, the moral philosopher takes part in the activity of making moral judgments—she reflects critically on accepted judgments, unearths unstated assumptions behind moral judgments, subjects such assumptions to critical scrutiny, and provides arguments in support of particular moral judgments or systems of moral rules. In order to do this, moral philosophers often need to begin by clarifying our core moral concepts. Starting with basic ethical questions—for example, What should I/we be or do?—the moral philosopher considers further questions. Take, for instance, the moral principle that we should not take what does not belong to us. When does a thing "belong" to someone? Do people have a right to their property? What is a "right"? Without answers to such questions, it is unclear what the principle is telling us to do, or why we ought to do it. Thus, much ethical reflection requires the clarification of basic concepts like "property," "right," "happiness," "virtue," and so on.

Practical ethics asks how theories or principles apply to particular questions within a particular domain, such as, What does privacy mean in the context of social media? or Is unauthorized copying equivalent to stealing? The study of practical ethics can be classified in terms of its domain or subject matter. To note just three domains: there is *medical or bio-ethics*, which focuses on ethical questions that arise in the context of medical care, such as how to fairly allocate scarce donated organs. There is *business ethics*, which focuses on ethical questions that arise in business transactions, such as who should be held accountable when a corporation causes harm. And there is *information ethics*, the subject of this paper, which focuses on ethical questions related to information creation, storage, organization, access, and control. There are, of course, many more areas of practical ethics (for example, engineering ethics, legal ethics, military

ethics, and so on), and there are questions that concern more than one domain. For, example, the issue of user privacy related to commercially available mobile applications for monitoring health (for example, food intake, exercise, pulse rate, glucose level) is at the intersection of information ethics, business ethics, and bio-ethics (fig. 1).

Currently, there are two major approaches to information ethics. The first, taken by information ethicists like Ess (2006), Moore (2010), Nissenbaum (2004), and Zimmer (2013), focuses primarily on human beings as the object of moral concern. The second, most notably advocated by Luciano Floridi (2002, 2008a, 2008b), focuses on information itself as the object of moral concern—with human beings being a special case of information objects (fig. 2). In order to clarify this division, it may be helpful to introduce the concepts of a moral agent and moral patient, which I do below.

A *moral agent* is an entity whose characters and action are appropriately the focus of moral evaluation or judgment. Most theories limit the category of moral agent to human beings. Since human beings are (at least somewhat) rational beings who make moral judgments and act on them, they can be evaluated from a moral point of view. We may judge that a person's action is kind or cruel, fair or unfair, in so doing holding them as "responsible" for their action.[4] A *moral patient* is an entity that is appropriately the focus of moral concern, but not judgment. Moral patients are entities that should be considered when making moral decisions, the harming of which is prima facie wrong. While in general ethical theorists agree that human beings are moral patients, what else may be considered a moral patient, and the proper degree of moral concern for such patients, is still a matter of debate. Some theorists include animals or the natural world more generally as moral patients, arguing that these entities ought to be given significant moral weight in their own right. Within the field of information ethics, Floridi (2008a) has proposed an information-based theory of the good, which extends the circle of moral patients to include all things that exist, considered informationally.

Without being committed to the view that *only* human beings are moral patients, the theory proposed here starts with the idea that human beings are a unique kind of moral patient, and that reflecting on what human beings owe to one another, setting aside other moral patients, is a useful way to divide the ethical labor. This in no way commits us to the view that the interests of human beings trump those of other beings; ultimately, ethical reflection should include what we owe to other beings. But for the most part, questions of information ethics are questions about how we should treat one another—how we should share, protect, and use information in ways that benefits (or at least does not harm) other human beings.

Ethical inquiry may focus on what we *ought* to do as morally responsible, individual human beings—what we might call *personal ethics*. Questions
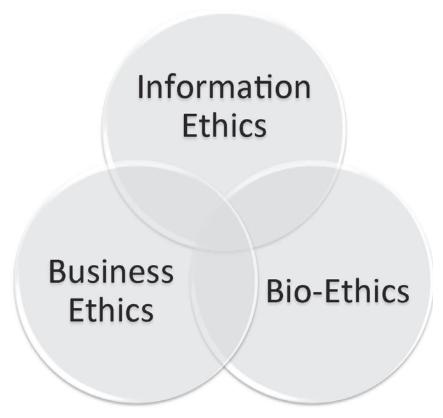
Figure 1. The three domains of practical ethics.

of personal ethics related to information may include: How wrong is it for me to download pirated music? Should we covertly monitor our child's Facebook account? Should I donate money to Wikipedia? At a wider scope are ethical questions that apply to a smaller group within the wider society, such as those with particular roles in society. One kind of group ethics is *professional ethics*—or more broadly, *role-based ethics.* Professional or role-based ethics starts from the fact that people take on various roles or functions within society. In so doing, persons individually and collectively take on particular responsibilities and obligations (as well as powers) that they do not have purely as individuals. Issues of professional or role-based ethics may include such questions as: Is it ever appropriate for an information provider to censor content? If so, when? Should the library charge fees? How should ICT professionals balance protecting user privacy and access versus cooperating with regional governments and laws? At the largest scale, ethical inquiry may focus on what we ought to
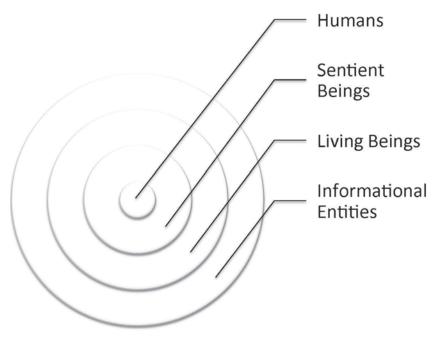
Humans

Sentient
Beings

Living Beings

Informational
Entities

Figure 2. The scope of moral concern.

do as a society—locally, nationally, and internationally. This is the focus of political philosophy (fig. 3).[5]

Questions in Political Philosophy of Information
As noted in the introduction, political philosophy has been defined as "philosophical reflection on how best to arrange our collective life—our political institutions and our social practices" (Miller, 1998). There are a number of different sorts of "bests" that we might be concerned with—efficiency, beauty, order, or wealth. Political philosophy is part of ethics; thus, it concerns how best to arrange our collective life in terms of moral values like equality, freedom, fairness, community, happiness, flourishing, and excellence. Political philosophy can be traced back to the beginnings of both Western and Eastern philosophy: Plato, Aristotle, and Confucius were all concerned with the best form of political organization.

To illustrate the range of political philosophy, consider the following general questions in political philosophy and how they relate to questions in information ethics:

• Do individuals have an obligation to obey the laws of their state? What are the limits of politically motivated disobedience? For example, is it
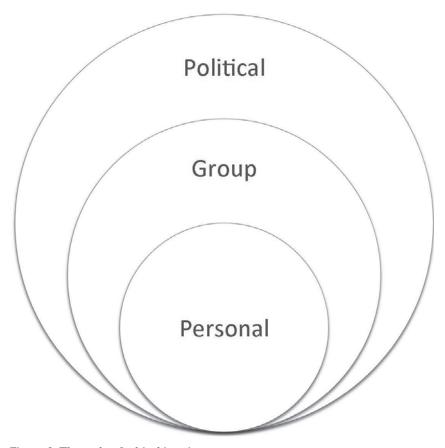
Figure 3. The scale of ethical inquiry.

morally permissible to leak classified information to a news source or Wikileaks?

- What (if any) are the limits of the authority of the state? For example, to what extent (if at all) is the state obligated to respect the privacy or free speech rights of individual members?
- Are there topics on which the state must be neutral? For example, should public libraries exclude certain kinds of content on the grounds that it promotes values that the state rejects (for example, racism, terrorism)?
- Can promoting liberty by itself stop oppression? Or may the liberty of some individuals need to be curtailed in order to create greater equality and opportunity? For example, is it sufficient that oppressed groups are given equal liberty to express their views, or should some forms of speech and expression (for example, hate speech, pornography) be limited in order to create the necessary conditions for genuine equality?

- Is it ever acceptable to limit individual liberty in order to promote greater community harmony, cohesion, or security? For example, is it permissible for governments to restrict speech that undermines social harmony or security?

Until as recently as thirty years ago, it was assumed that questions of equality, democratic representation, and rights were matters of relations among citizens and the government of a single state. Discussions of just relations among people in different states were limited to just war theory and, perhaps, questions about obligations to the global poor. Recently, there has been an emergence of a greater concern with global or international justice and human rights. In short, the "collective life" has expanded from the populace of the nation-state to the whole of humanity. And, in our expanding global-information society, these political questions related to "global information ethics" (Carbo & Smith, 2008a; Zaïane, 2011) are particularly pressing.[6] Thus, there are a large number of questions in information ethics that are questions of *international* political philosophy:

- What are the limits (if any) of pursuing the national interest? Do states have obligations to one another or to individuals in other states? What is the source of such obligations? For instance, do Americans have some obligation to see to it that those in other countries have access to essential information?
- Under what circumstances is one state justified in going to war with another? For example, are states justified in engaging in information warfare? If so, under what conditions?
- What obligations does one state have to respect the rights of those in other states? For instance, what obligations does the US government have to respect the informational privacy of those in another state?
- What is required for international institutions and agreements to be legitimate? For instance, are current intellectual property regimes fair to developing nations?

Theoretical Frameworks

In addition to choosing what domain, scope, and scale will be the focus on an ethical inquiry, the ethical theorist must also choose a theoretical framework. It is common to divide ethical theories into consequentialist and nonconsequentialist frameworks. *Consequentialist theories* focus on the consequences or outcomes of an action or policy. If the consequences of the action or policy are good overall, then it is the morally right choice. Consequentialists differ among themselves on what counts as a "good consequence." The most common form of consequentialism is utilitarianism, which views general happiness or preference satisfaction as the good consequence to be sought. Nonconsequentialists hold that we should not

use consequences as our (only) guide to whether an action or policy is morally correct; there are other moral considerations grounded in moral rules, virtues, or relationships. *Nonconsequentialist theories* include Kant's deontological ethics, Aristotle's virtue ethics, and the feminist ethic of care.[7] Both consequentialist and nonconsequentialist theories, however, are what we can call *monist theories*; monists hold that we should use a single moral framework when making any ethical decision.

Unlike monist approaches, pluralist approaches, such as particularism, casuistry, and principlism, avoid the commitment to a single unique ethical theory or conception of value. *Particularism* eschews moral theorizing altogether, arguing that moral problems must be solved on a case-by-case basis. *Casuistry* also focuses on cases, but adopts analogical reasoning to determine how previous cases may provide guidance for resolving new cases. The *principlist* articulates and defends "mid-level principles," such as "respect autonomy"; principlists give pluralistic arguments for such principles, showing how they may be supported by various forms of ethical reasoning—including both consequentialist and nonconsequentialist reasons (fig. 4).

As an approach to political theorizing, principlism has virtues over both monist and other pluralist approaches. First, principlism does not rely upon a single moral theory, but incorporates a number of moral considerations, including concerns for consequences, virtue, and specific duties, such as respect. Thus, it does not require that all people accept a single ethical theory in order for them to accept a basic ethical principle. Second, principlism, as its name suggests, provides principles that can serve as a shared basis for discussions of public-policy decisions. These principles are designed to be clear and applicable to a wide range of circumstances, so consequently are well-suited for handling issues in practical ethics. Indeed, it is not surprising that principlism is the most widely used approach in bio-ethics, which is the most developed area of practical ethics (Beauchamp & Childress, 2001).

Political theorists like Hobbes, Locke, and Rawls have suggested that our common life ought to be governed by a few principles—often formulated as *basic rights*. Indeed, rights theories have various similarities with principlist approaches insofar as 1) the rights that one must respect are plural, and each of these rights must be exercised in the light of the others; and 2) rights can be justified via a number of different, more basic ethical theories, including: a theory of natural rights (Locke, 1690/1988), utilitarianism (Mill, 1861/1985), capabilities theories (Nussbaum, 2000), and pragmatism (Beitz, 2009). In section 4, I suggest that we think of human rights as normative principles to guide policy-making. First, however, it is important to consider how we can justify any set of political principles—be they human rights or other principles.
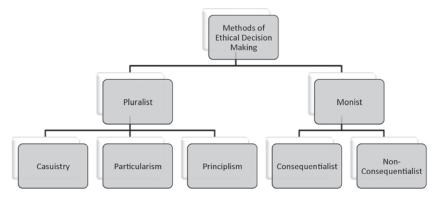
Figure 4. Methods of ethical decision making.

JUSTIFYING PRINCIPLES IN A POLITICAL PHILOSOPHY OF INFORMATION

Political philosophy's focus on the ethical conduct of our *collective* life has important implications for how political principles ought to be justified. Since the question is how *our* collective life should be arranged, the justification must be one that is addressed to *us*. It is not sufficient that *I* have good reasons to accept a particular political principle; reasons to accept the principle must be available to everyone within the political community. In recognition of this fact, a number of philosophers, most notably Rawls, have developed an account of "public reason." Public reason "requires that the moral or political rules that regulate our common life be, in some sense, justifiable or acceptable to all those persons over whom the rules purport to have authority" (Quong, 2013). Public reason is both a set of reasons that can be shared by the public (as opposed to *private* reasons) and an attitude toward public discussion.

To better understand what public reasons are, it may help to start with an example of justifications that do not count as public reasons in today's multicultural world. Many classic texts of political philosophy are no longer sources of public reasons. Such works typically start from what Rawls calls "a comprehensive conception of the good." They then derive their political principles from that conception. A "conception of the good" is a view of the nature of human beings and their place in the world, implying particular metaphysical and moral commitments. Aristotle (1998), for example, begins his *The Politics* with a description of human beings as rational animals who have the natural function of living their lives according to reason; when they do so, they are "virtuous." Only when organized in a way that promotes virtue can the society and the persons in it function properly; this can only occur if the society is governed by reason.

This account leads Aristotle to propose "aristocracy"—rule by the most virtuous (and thus most rational) persons—as the best form of government. Similarly, appealing to religious and political views common among his fellow Englishmen, Locke (1690/1988) argued that all persons are by nature free and equal. While they are also naturally sociable, according to Locke, persons are mildly competitive and will come into conflict if there is no recognized authority. Consequently, persons would choose to have an authority to enforce laws in order to avoid the costs of such conflicts. Thus, in Locke's view, given individuals' natural freedom and equality, the only justified authority would be one that people freely choose through a social contract while retaining certain "natural rights," such as that to property.

Aristotle and Locke started from different comprehensive conceptions of the nature of human beings from which they derived their political theories, and which they used to justify these theories to their communities. Shared sets of beliefs about the nature of human beings and their place in the world are harder to come by in contemporary pluralistic, multicultural societies. While there may be wide agreement on core beliefs and values within certain societies, these are much more difficult to locate within liberal democracies, such as are found in North America and Europe. When it comes to the international community, broadly shared common, comprehensive conceptions are even more difficult to find. Globally comprehensive conceptions range from atheism to fundamentalist monotheism, from individualism to communitarianism, from cosmopolitanism to ethnic nationalism. In this sense, pluralism is not just a theoretical choice, but an empirical fact. Furthermore, as Rawls (1993) points out, this pluralism is "reasonable"; it is natural that people who are free to adopt or develop their own views will end up with divergent views. While some disagreement can be bridged with more information, correcting prejudices, or improving communication, some disagreement is simply ineliminable.

Given the fact of reasonable pluralism, arguing for political principles from premises that rely upon a particular comprehensive conception is a nonstarter. This is not just because agreement is unlikely, but because justifying a principle based on your comprehensive conception fails to show understanding of and respect for those persons who do not share your conception. Arguing for political principles that are intended to govern our collective life on the basis of a particular comprehensive conception is like insisting on speaking English to people who speak only Spanish; it is disrespectful—it assumes that others should (and, if they were not recalcitrant, would) speak your (moral) language. On Rawls's conception of public reason, such arguments fail to be reasonable. To be reasonable in this sense is to show the political virtues of tolerance, mutual respect, fairness, and civility (p. 122).

Given the fact of reasonable pluralism, how can we expect there to be any shared public reasons on which to base political principles? How is it possible to justify political principles in a way that is reasonable and does not start from a particular comprehensive conception? In his work after *A Theory of Justice* (1971), Rawls developed an approach to political philosophy that he hoped could proceed without commitment to a comprehensive conception—a theory that is "political, not metaphysical." Key to this approach is the idea of an "overlapping consensus" (Rawls, 1987). The idea of an overlapping consensus is that persons can each have reasons for accepting a political principle based on their own deeply held comprehensive conception without everyone sharing the same conception. A classic example of an overlapping consensus is the shared commitment by many religious and nonreligious persons in the United States to the principle of the separation of church and state, as expressed in the Bill of Rights. Religious persons from a variety of faiths can be fully committed to this separation on the grounds that faith is a personal commitment that ought not be mandated by the state; nonreligious persons can also be committed to this principle on the grounds that they should be free to not practice any religion whatsoever. It is important to emphasize that an overlapping consensus is not merely a compromise. Rather, each person or group of persons is committed to the principle in part because it is supported by their own comprehensive conception of the good.

Ideally, while the principles are supported by reasons from within various comprehensive conceptions, this is not the only source of persons' commitment to them. The fact that a principle is able to gain an overlapping consensus is itself a reason to endorse it. It seems likely that a principle that can be supported by a number of different comprehensive conceptions may be capturing some central moral concern. More importantly, however, in seeking for an overlapping consensus, persons show respect for one another. It is as a principle that embodies such respect that the object of an overlapping consensus gains an independent source of commitment.[8] Public cultures that come to share a number of such principles develop the resources for a robust form of public reason. We appeal to public reasons when in discussions with fellow members of the political community (whether the community is a nation-state or the international community) we appeal to shared principles, rather than to our own comprehensive conceptions.

Rawls's theory of the overlapping consensus supporting public reason provides an idealized picture of how justification should function in a pluralistic society. Unfortunately, it provides little insight into how we can get to this ideal state or how public reason may change over time because it requires only that preexisting public reasons be appealed to in any public political discussion. Habermas's (1990) theory of discourse ethics provides a way to think about the development of public reason as

a dynamic and open process. For both Rawls and Habermas, the goal is the same—to discover shared interests and values that can be the basis of collective self-governance while still allowing for differences in individual and group views of nature, human beings, and what constitutes a "good life." However, while Rawls insists that principles of justice and policy proposals ought to be justified by appealing to public reason alone, Habermas encourages a wide-ranging discussion among the public. This discussion would include each person articulating her own perspective, including her reasons grounded in her comprehensive conception of the good. According to Habermas, it is through a dialogue where people listen to one another's perspectives and try to see the world from one another's point of view that we can discover the common interests where our views overlap (Rehg, 1994, pp. 101–103).

Allowing people to articulate their comprehensive conceptions in public discussions of political principles has a number of epistemological and moral advantages:

- It exposes us to the interests, perspective, and concerns of others.
- It helps us to discover what our own concerns really are; it is often only in articulating our concerns and perspectives to others that we truly understand them for ourselves.
- It provides a check on the reasoning of the individual; persons may have blind spots and inconsistencies of which they are unaware.
- It creates the context for problem solving: together, we may see possibilities for overlapping consensus that we would not have seen alone.
- It shows respect for others as equal partners in a dialogue.
- It builds the basis for understanding and empathy.
- It creates the context for genuine solidarity as we come to understand (although not always agree with) one another's perspectives.
- It provides a check on whether there is a genuine overlapping consensus or merely acquiescence.

Given these virtues of opening up the realm of public political discussion to arguments based on comprehensive conceptions, I suggest that we adopt a robustly *dialogic* approach to public reasoning. On a dialogic public reason we set as our goal developing together an understanding of what our shared public reasons can be.

The dialogic approach also leaves room for individuals and groups to develop new understandings in response to societal changes. So, for example, the digital revolution has brought with it many new opportunities and threats to human flourishing. Philosophical and other theorizing about the nature of these challenges and possible responses to them (see, for example, the European Commission's Onlife Initiative [2014]) can start and enrich dialogue. However, in cases where there is substantive disagreement among parties (that is, where there is no overlapping

consensus), public policy ought not to be based on such theories. This does not mean that we can make no progress in the pressing issues that face us; in many cases, it will be possible to avoid controversial theoretical debates—for instance, about the nature of information (Floridi, 2005; Furner, 2004; Hjørland, 2007)—and find agreement on practical principles, such as the protection of online privacy.

Not only can a robust dialogic public reason support a principle of access to information, but access to information is a necessary precondition for public reason. In order to craft workable and fair principles, persons must be able to put forward their views in a public setting, be exposed to the views and traditions of others, and have access to essential information. Moreover, persons must have the capacities to understand and critically evaluate this information. Consider just some of the kinds of opportunities people need to share and receive information in order for public reasoning to develop and justify political principles. In order to have a fruitful discussion about how we can organize our affairs collectively, people need access to useful and accurate information about the range of possible social practices, along with information about their characteristic benefits and problems. The reasoning for the principles should, according to Rawls (1993), "include the procedures and conclusions of science and social thought where these are well established and not controversial" (p. 67).

Persons do not just need access to the "facts"; people need to be able to express their points of view, hear the points of view of others, engage in questioning and conversation, and their expressions be given due weight in public deliberations. The ability to engage in such a dialogue requires more than knowing various facts about others—it requires tolerance, mutual respect, fairness, and civility (Rawls, 1993, p. 122). By treating others in this way and being so treated, persons acknowledge themselves and others as equal members of the community, supporting what Rawls (1971) calls "the social bases of self-respect" (p. 62). Of course, dialogue does not end once principles have been adopted; like any virtue, we develop these virtues by practicing them, which we can only do in an environment that values freedom of expression and diversity.

Even once an overlapping consensus has developed for political principles, people will need information about what the principles are and the reasoning for them. This is what Rawls (1993) calls the "publicity condition"—that is, people governed by the principles should know what they are and the basic reasoning for them (pp. 66–67). And, as principles are not self-implementing, persons will need information about the effective means for implementing them. In order to monitor whether the political principles are actually effective, persons will need information about where and when the principles are not being followed. Furthermore, in order for individuals and communities to benefit from the principles, information must be freely available about both the mechanisms for address-

ing their violations of the principles and how to use those mechanisms. Finally, people need the information required to determine whether the principles are really promoting the goods intended, and whether they continue to do so as society changes.

Human Rights as Principles for Global Public Reason

Given that information now flows easily around the globe and the fact that many wish to control this flow for better or for worse, a number of theorists have focused on developing a global and intercultural information ethics (Capurro, 2005, 2008; Carbo & Smith, 2008b; Ess, 2006; Hongladarom & Ess, 2007; Smith, 2001; Zaïane, 2011). Since, as mentioned in the introduction, many of the most pressing questions in information ethics are political questions, we should be seeking for a global overlapping consensus on shared principles of global information justice. One of the few political philosophers who has written on the subject, Joshua Cohen (2006), writes that "global public reason comprises a set of political values, principles, and norms for assessing political societies, both separately and in their relations, that can be widely shared" (p. 236). I follow Cohen in claiming that human rights, as put forward in a number of documents from the United Nations and international bodies, can supply a set of possible values, principles, and norms; as such, they can form a common language and commitments within which global public debate about issues like privacy, access, and intellectual property can take place.

Human rights are moral rights (often enshrined in soft or hard law) that all persons have, regardless of their nationality, sex, religion, and so on. Human rights as articulated in the UN's 1947 Universal Declaration of Human Rights (UDHR) can be seen as the object of an overlapping consensus expressing a "global public reason" *avant la lettre*. Indeed, the development of the declaration looks much like dialogic public reason in action. In the process of developing the list of rights to be adopted by the UN, scholars from around the world and from a variety of traditions were consulted (including philosophers and religious leaders from places as diverse as the United States, Soviet Union, South America, Africa, China, Turkey, and Europe). In addition to formal and informal discussions, memos, draft documents, and so on, each of these scholars was asked to write an essay for a volume that would articulate the range of points of view supporting the human rights listed in the declaration. In the introduction to that volume, Jacques Maritain characterized their deliberations in a way similar to Rawls's characterization of overlapping consensus some forty years later. Maritain asked: "How . . . can we imagine an agreement of minds between men who are gathered together precisely in order to accomplish a common intellectual task, men who come from the four corners of the globe, and who not only belong to different cultures and civilizations, but are of antagonistic spiritual associations and schools of

thought?" He answered that "agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action . . . a body of common practical convictions" (UNESCO & Maritain, 1949, p. 2).

Taking our cue from Maritain, we can understand human rights as a set of practical political principles for organizing our collective life globally. There is evidence that human rights are already serving as such. According to noted human rights theorist James Nickel (2012), "Human rights are more widely accepted than they have ever been. They have become part of the currency of international relations, and most countries participate in the human rights system" (§5.8). Individuals in twenty-four countries, including Kenya, Azerbaijan, China, Mexico, and South Korea, found that "the dominant view was in favor of the United Nations actively promoting human rights principles in member states. On average 70 percent favored such efforts" (Council on Foreign Relations, 2009, p. 1).

Human rights have the virtues of any principle-based approach: the rights are public, easy to understand, and not grounded in any particular ethical theory or comprehensive conception. In addition, they have the virtue of being widely accepted and already embedded in much international discourse about just institutions. Indeed, it is increasingly common for countries accused of human rights violations to respond, not by rejecting the rights, but by challenging the claim that they are "human" rights. The leaders of these countries may argue, for instance, that it is a question of prioritizing human rights or balancing them with other important goods, such as security or prosperity; or, they may say that while they accept human rights, the particular rights proposed by the UN do not reflect genuine human rights or the full range of such rights; or, they may respond by pointing out the human rights violations of others. It is increasingly rare, however, for those in power to outright reject human rights as norms without international validity.

For example, Chinese officials recently responded to what they called the United States' "carping" about human rights in China by issuing a scathing report on the human rights violations in the United States ("China Hits Back," 2013). The report pointed out a number of aspects in which the United States is failing to respect such rights, including surveillance of citizens and failure to protect citizens from gun violence. While one may argue that this is a case of trying to redirect attention, it is notable that the Chinese government did not simply say that human rights are a Western construct that do not apply to the East; rather, Chinese officials claimed that they *are* respecting human rights and that the United States is distorting the record. This is not to say, of course, that everyone in all countries accepts the construct of human rights; some hold to the view that there is

a correct comprehensive conception that should determine what laws and policies a state should adopt. Nevertheless, increasingly, human rights are becoming an ethical "lingua franca" (Tasioulas, 2007).

To adopt a human rights framework is not to commit ourselves to every putative right listed in UN documents. We can take seriously current human rights agreements as a starting point but leave open the possibility of critique. As Cohen (2004) puts it, "global public reason—and the idea of human rights in particular—provides a terrain of deliberation and argument about appropriate norms, . . . not a determinate and settled doctrine awaiting acceptance or rejection" (p. 195). Such questioning is a natural part of the ongoing project of dialogic public reason.

While comprehensive conceptions can be provided as reasons in public discourse, the ultimate public justification for shared principles like human rights should not rely upon controversial comprehensive conceptions. Thus, if a putative human right is justified solely in terms of controversial comprehensive conceptions, it does not count as part of global public reason. To illustrate how public reason can function as a way to evaluate principles, I conclude this section by briefly considering whether the right to intellectual property satisfies the requirements of public reason.

The UDHR states in article 27, paragraph 2 that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[9] For the sake of simplicity, we can call this "the human right to intellectual property." In its various documents, the UN has offered a set of justifications for this right. According to the UN, the "material interests" of creators refers to the potential income from the sale of a creative work sufficient to enjoy an adequate standard of living (UNHRC, General Comment 17, §15).[10] But, it is not obvious why persons have a right to make a living off of their intellectual works. In many cultures, intellectual works are seen as belonging to the community as a whole (Mathiesen, 2012; Mun, 2008). The most common justification offered for the right to own intellectual property is based on the theories of Locke (Hughes, 1988; Moore, 1997). On the Lockean justification, we have a natural right to our intellectual property on parallel reasoning with our natural right to physical property. Since, according to Locke, we own our bodies (including our minds), we come to own those things that we transform using our bodies. In creating intellectual works, we work on and transform the common cultural resources to create something new, thereby gaining ownership over these creations. The "moral interests" of creators include the rights to be recognized as the author of a work and to reject any distortion of the work that would "be prejudicial to the honour or reputation" of the author (UNHRC, General Comment 17, §13); the UN justifies this right by appealing to the view that works are "expressions of the personality of

their creator" (§14). A *locus classicus* of this idea is Hegel's (1820/1991) *Elements of the Philosophy of Right*, according to which the things we create are the physical manifestations of our personalities in the world; they have an intrinsic and unalienable connection to us as persons (Hughes, 1988, p. 350). Both the Lockean and Hegelian views of the relationship between persons and their creations are highly culturally specific; a number of cultural traditions do not conceptualize creative works as the sole production and property of individuals in this way.

As can be seen from the above, the current justifications provided by the UN for intellectual property as a human right are deficient from the perspective of public reason, as they rely upon "comprehensive conceptions." The UN offers no alternative comprehensive conceptions to support the human rights of authors in their works, nor does it appeal to widely shared reasons. Thus, as they stand, these justifications do not follow Maritain's call for practical principles grounded in shared experience, and they fail the test of public reason. Absent an alternative or more pluralistic justification of the human right to intellectual property, we should be skeptical of its status as a human right. As a result, we should give less weight to considerations of intellectual property rights than to other rights that are more securely grounded in public reason, such as the human right to have access to information (Mathiesen, 2013).

Conclusion

Many of the most pressing issues in information ethics—informational privacy, surveillance, intellectual property, access to information, the distribution of information resources—are ones that must be addressed at the level of global politics. In addressing these issues, information ethicists do not need to reinvent the wheel; there is a rich vein of reflection on how to think about political principles in a pluralistic, multicultural context. The work of Rawls, Habermas, Cohen, and many others can provide helpful concepts and frameworks for thinking through issues in global information ethics. It is not only information ethics that can benefit from greater contact with political philosophy, however; political philosophers have as yet not sufficiently engaged with questions of informational justice. These questions are becoming increasingly central to human freedom and well-being as we all become part of a global information society. In addition to broadening the scope of their questions, however, a focus on informational justice has even more to offer to those working in basic questions in political philosophy. Attention to the role of information brings into focus the fact that, in order for public reason to function and for systems to achieve justice, certain informational conditions, such as open access to information and information privacy, must be met. Information ethicists have an important contribution to make in articulating the centrality of information to the project of political philosophy.

Notes

1. This actually encompasses the broader category of social and political philosophy. For the sake of simplicity, I will just use the umbrella term *political philosophy*.
2. One notable exception is the work of Joren van den Hoven (see, for example, van den Hoven & Rooksby, 2008).
3. Nonphilosophers often make a distinction between *morals* and *ethics*. But within philosophy, these terms are typically used interchangeably. It is more common to use *ethics* in discussions of applied or practical ethics, but this does not track any substantive distinction between the notions of morals and ethics as they are used in philosophical discourse.
4. Admittedly, at various times philosophers have considered some human beings—for example, women, slaves, and certain ethnic and racial groups—as lesser moral agents, having some moral responsibility though to a lesser degree. (Today, most theorists, although not all, place children in this category.)
5. While it is a subfield of ethics, it is not typically called *political ethics*, but *political philosophy*. This may be because the term *ethics* has a connotation of something based on day-to-day interactions and less on wide-scale social organization.
6. In addition to political questions about the creation, collection, and distribution of information, there are more fundamental issues about the role of information in an account of political and social justice. I will return to a discussion of the foundational role of information in political philosophy at the end of section 3.
7. Even these distinctions can get blurry, however. One may take a consequentializing approach to protecting rights, or one may justify duties or rights on the grounds that acting on them will lead to the best consequences. Conversely, nonconsequentialists may give significant moral weight to whether something produces good consequences, giving priority to rights and duties.
8. This is not to say that we can expect to find principles to which all persons will agree or that all comprehensive conceptions are capable of grounding an overlapping consensus. According to Rawls, it is not to be expected that "unreasonable" conceptions will form a part of the consensus. Reasonable persons (or persons with reasonable conceptions) are those who recognize the fact of pluralism and who wish to operate on principles that are fair to all parties.
9. Interestingly, unlike the right to own property, which is also listed in the UDHR. The right to the protection of intellectual property rights is included in a binding international covenant, the International Covenant on Economic, Social, and Cultural Rights (ICESCR).
10. The UN periodically issues statements (called "General Comments") on various human rights listed in its documents in order to provide guidance and insight into those rights.

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