Privacy & Ethics

San Francisco Regional Compliance & Ethics Conference 2019

Speakers

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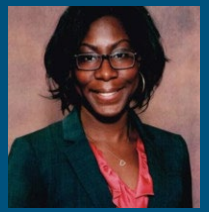

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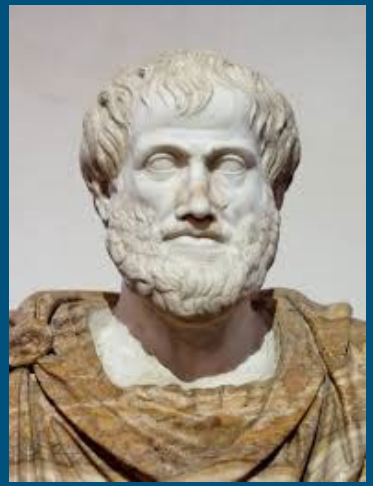
Ethical Frameworks

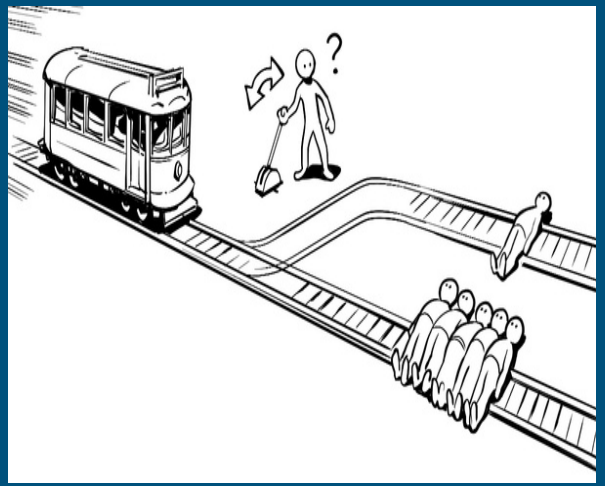
What is Ethics?

Virtue

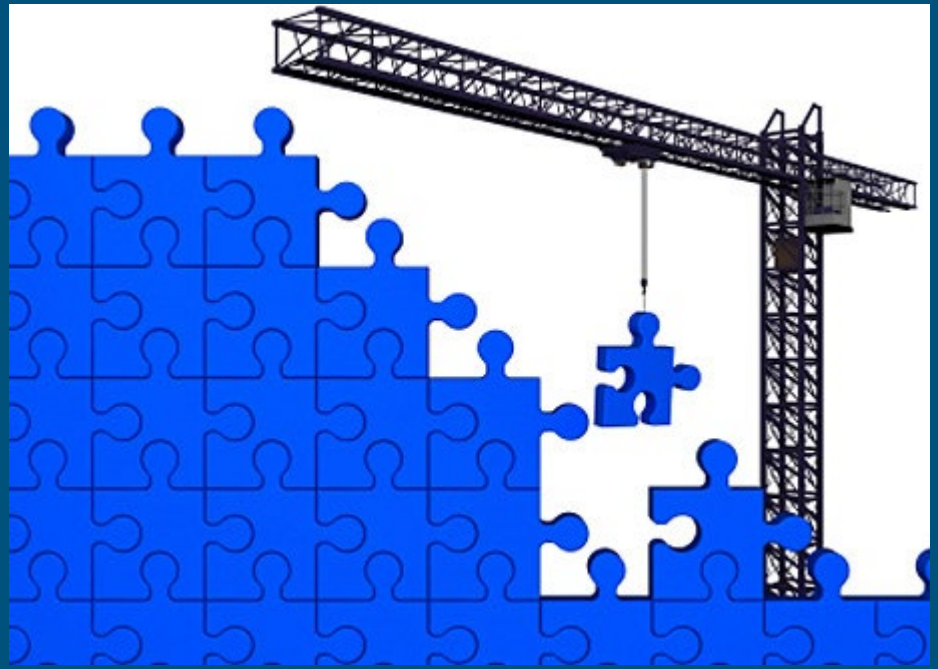
Fairness & Justice



Utilitarianism



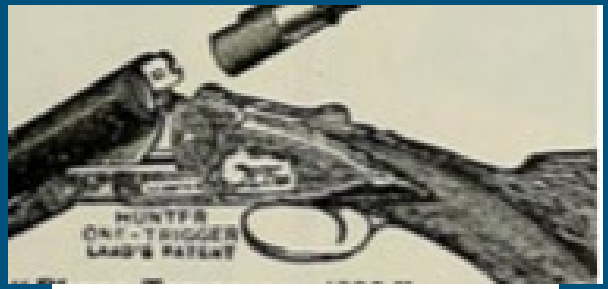
What is a Framework?



Data Protection as an Ethical Decision-Making Framework

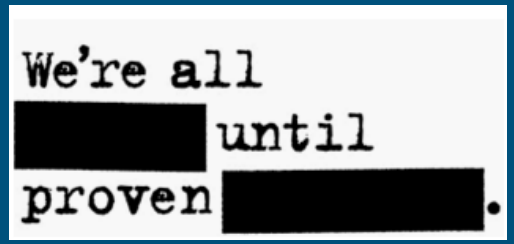
How it all started . . .

- Data protection law started as a EU reaction to the rise of computers in the 60s
- The goal was to ensure ethical use of information technology (in the words of GDPR, ensure that technology is "built to serve mankind"
- The history of the EU may explain the reaction...



"data protection law was not designed to protect private information from disclosure but to protect people from a specific form of technology: computers."

Data Protection vs. Privacy



- Purpose Centric vs. "Consent" Centric
- Personal Data v.s Private Data
- Control = Accountability v. Fiduciary duty
- Transparency

The right to data protection in the EU Charter

Key point:

The Charter explicitly raises the level of the right to data protection (Article 8) to that of a fundamental right in EU law, separate and at the same level as the right to privacy (Article 7).

Article 8:

" Protection of personal data.

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid hdown by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority."

Freedom of Speech?

Citizens United v. Fed Elec. Com (130 S.Ct. 876) (2009)

In a case dealing with regulation of political campaign spending by organizations the Court held (5–4) the free speech clause of the First Amendment prohibits the government from restricting independent expenditures for communications by nonprofit corporations, for-profit corporations, labor unions, and other associations

Rowan v. United States Post Office Dept. (90 S. Ct. 1484) (1970)

The Court ruled that an addressee of postal mail has sole, complete, unfettered and unreviewable discretion to decide whether he or she wishes to receive further material from a particular sender, that the sender does not have a constitutional right to send unwanted material into someone's home

Mainstream Marketing Services, Inc. v. FTC, 283 F. Supp. 2d 1151 (D. Colo. 2003)

The court held that the FTC rules prohibiting telemarketers from calling numbers registered in the 'do-not-call' law did constitute a governmentally imposed burden on free speech, but, given the specific facts of the case, did not violate the First Amendment.

***Sorrell v. IMS Health Inc.* (131 S.Ct. 2653) (2011)**

A statute that, absent consent, prohibited the sale of prescription information by pharmacies to data brokers for marketing purposes was declared an unconstitutional although the record supported that the information was being used to push sales for more expensive and sometime less effective drugs.

Ultimately, Who benefits?

- Individual consumer
- Group of consumers
- Society as a whole
- Organization controlling technology / data

Key points:

Controllers must have a valid lawful basis in order to process personal data.

There are six lawful bases available for processing (consent, contractual necessity, legal obligation, vital interest, public interest/official authority, and legitimate interest). No single basis is 'better' or more important than the others—the most appropriate basis depends on the processing purpose and relationship of the controller to the individual.

Most lawful bases require that processing is 'necessary' for a specific purpose. If the same purpose can reasonably be achieved without the processing, the processing is not "necessary".

Consumerism

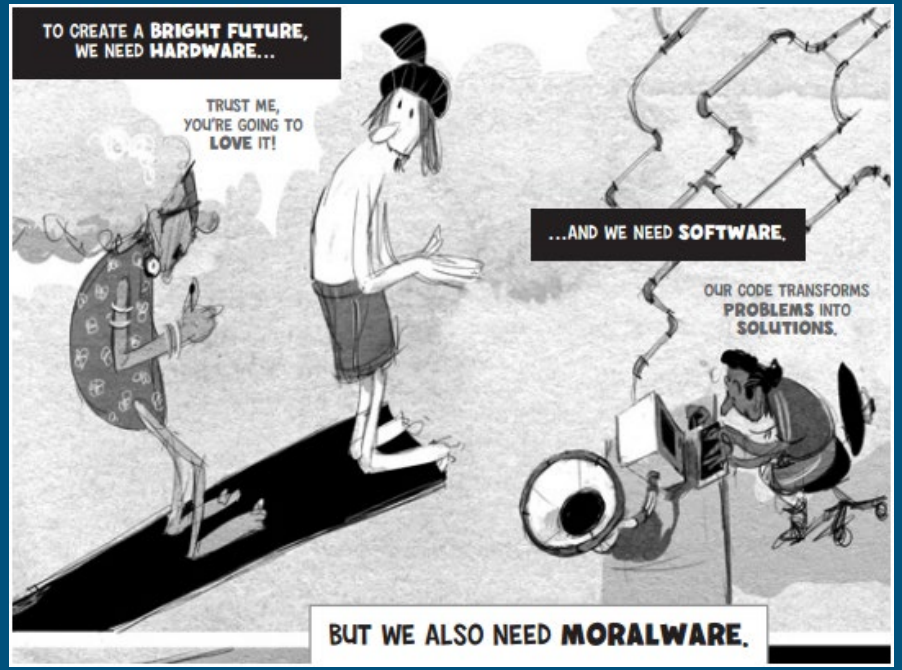
The California Consumer Privacy Act

The applicability of some of the provisions of California Consumers Privacy Act (CCPA) is dependent on the purposes for which the data is held or shared to some extent.

CCPA defines 'business' and 'commercial' purposes explicitly but it could be argued that there are other purposes that could be implied from the text of the law.

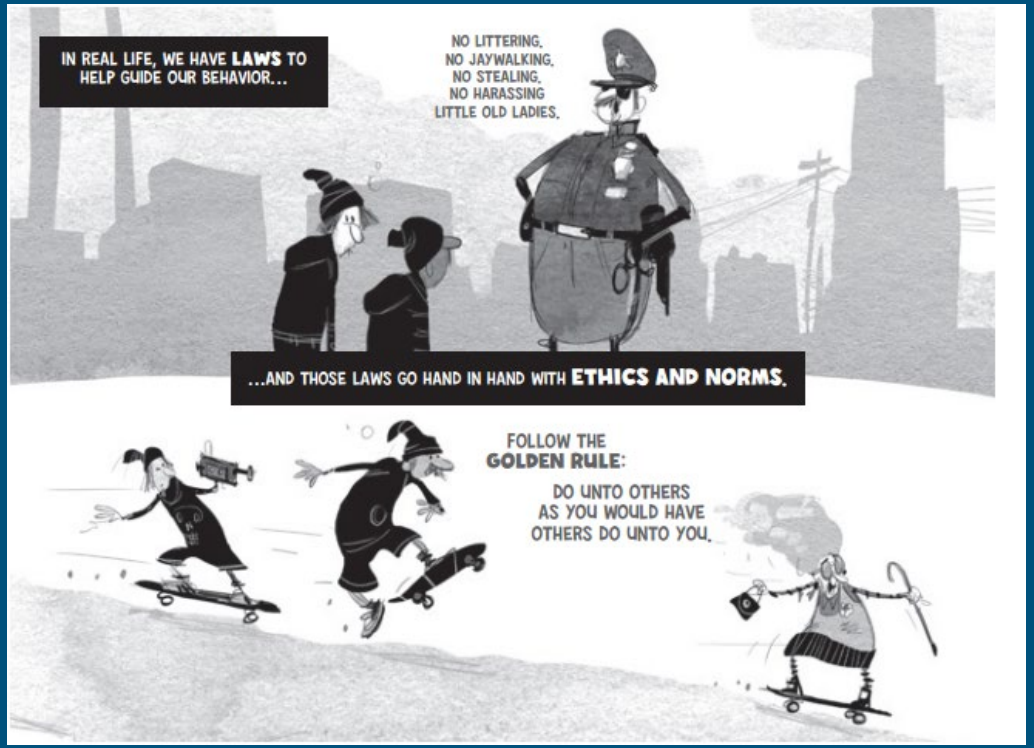
Technology's Role in Creating & Enforcing Data Ethics

- The Markets & Competition
- Technical Measures
- Co- & Self-Regulation

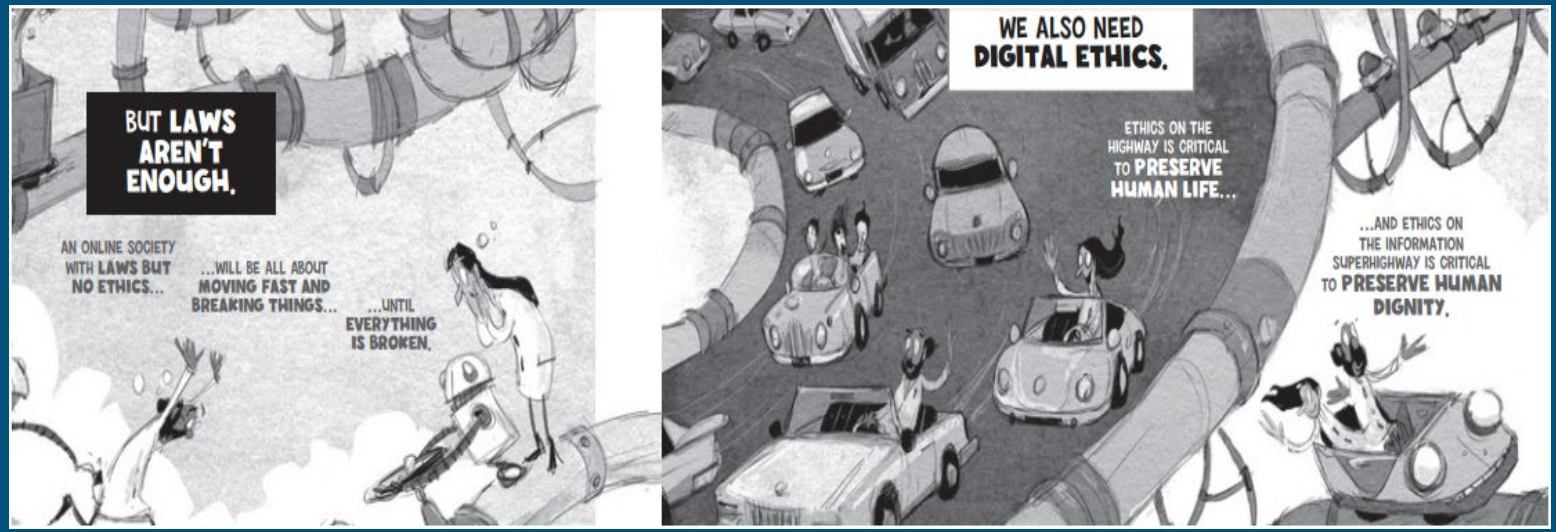


Moving Forward...

Society's Role in Advancing the Future



Privacy is Not the Only Question



Thank you.