

**Privacy, Due Process and the Computational Turn:
The philosophy of law meets the philosophy of technology**

Edited by Mireille Hildebrandt and Katja de Vries

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“{[Privacy]} seems to be about everything, and therefore it appears to be nothing.”¹

Mireille Hildebrandt and Katja de Vries’s *Privacy, Due Process and the Computational Turn: The philosophy of law meets the philosophy of technology* identifies issues of privacy specifically related to the use of computational systems and the study of computational media, also referred to as the computational turn.² The increased use of computational systems, such as data analytics, and the extent to which they are relied upon in today’s society for profiling and categorizing individuals, raises concerns regarding the existence of violations of an individual’s privacy. This review examines individual’s right to privacy and due process mainly focusing on their existence in relation to computational systems.

¹ MIREILLE HILDEBRANDT & KATJA DE VRIES, *PRIVACY, DUE PROCESS AND THE COMPUTATIONAL TURN: THE PHILOSOPHY OF LAW MEETS THE PHILOSOPHY OF TECHNOLOGY* 12 (2013).

² (Data mining, behavioral advertising, government, profiling for intelligence, customer relationship management, smart search engines, personalized news feeds, etc.)

The book takes an interesting look into the world of the computational turn and could not have been edited by two more prestigious individuals.³ Mireille Hildebrandt started her academic career focusing on cultural anthropology later switching her focuses to law. She received her JD from Leyden University and her PhD from Erasmus University Rotterdam. Currently, Ms. Hildebrandt is a tenured Research Professor on Interfacing Law and Technology at Vrije Universiteit Brussels. Additionally, she holds the part time Chair of Smart Environments, Data Protection and the Rule of Law at the Science Faculty, the Institute for Computing and Information Sciences (ICIS) at Radbound University Nijmegen. She is editor and chief of the Netherlands Journal of Legal Philosophy. Ms. Hildebrandt has also co-edited numerous publications including: *Profiling the European Citizen* (2008) and *Law, Human Agency and Automatic Computing* (2011).

Katja De Vries received three masters' degrees with distinction from Leiden University and additionally graduated from Oxford University. She is currently a PhD student at the Centre for Law, Science, Technology, and Society at Vrije Universiteit Brussels where her research is focused on the collisions and interactions between legal and technological modes of thinking. Her published works are focused on probabilistic understandings of rationality and equality, and how they function with advancements made to data technologies and the legal field.

This book begins with an introduction that sums up the contents of the book in several pages. Ms. Hildebrandt and Ms. De Vries acknowledge that this specific chapter was written to accommodate what they are calling the “average hurried reader.”⁴ They explain that the purpose of this book is to help readers understand how privacy and due process affect the “legal, moral

³ See HILDEBRANDT, *supra* note 1, at 2-7 (explaining that each chapter was contributed to the book written by different professionals from both the legal and technological fields).

⁴ See HILDEBRANDT, *supra* note 1, at 2.

and political framework of our constitutional democracy.”⁵ The chapter further goes on to examine and summarize the contents of the subsequent chapters.

Chapter one starts with a parable, which included the use of three robotic dogs to illustrate the concepts, phenomena, and solutions addressed in this book.⁶ The chapter further goes on to give a brief overview of exactly what the terms computational turn, privacy and due process mean. It also addresses how society can coexist with advanced technological machines in the future and the various courses of action society can take to properly coexist. The chapter closes by revisiting the robotic dog parable. Four practical lessons are drawn and compared to the era of the computational turn by revisiting the parable.⁷

Chapter two examines techniques surrounding the profiling of individuals. It goes on to explain what profiling is, how technological advancements have made it easier to profile individuals, and how easier profiling additionally makes it easier to evaluate patterns or reasoning and behavior.⁸ The focus of this chapter is on highlighting how technology has advanced to a point that individual privacy is being taken away specificity because technology can now predict what individuals are going to do in the future.⁹

Chapter three focus on knowledge in the current “technological world” knowledge. It addresses two main concepts: (1) that more value should be given to people as opposed to objects and material things and (2) a new idea of what constitutes knowledge in today’s society.¹⁰ The reader is provided the idea that by enhancing free will, freedom, responsibility and ownership of our destinies we ultimately will develop human dignity, but to do so requires

⁵ See HILDEBRANDT, *supra* note 1, at 2.

⁶ See HILDEBRANDT, *supra* note 1, at 9.

⁷ See HILDEBRANDT, *supra* note 1, at 26.

⁸ See HILDEBRANDT, *supra* note 1, at 41

⁹ See HILDEBRANDT, *supra* note 1, at 41.

¹⁰ See HILDEBRANDT, *supra* note 1, at 68.

knowledge of how to do so.¹¹ Readers are then warned that although these advancements can be greatly benefitted from, they should also be limited for fear of encroachment upon and interfering with an individual's self-realization.

Chapter four expands on the idea of knowledge focused on in chapter three. This chapter discusses the development of the law after the computational turn and argues that current scientists find their data inspiration from the "bad man" theory of law.¹² The author warns that individual due process is at stake with developing predictive technologies to enhance law enforcement.¹³ He urges that as a result of these predictive methods due process could eventually be eliminated because the law and the individuals rights will no longer be equally balanced, the law will eventually take over thus eliminating an individual's right to observe and understand that his/her participation in a certain activity could ultimately implicate them.¹⁴

Chapter five analyses web based intelligence. This chapter shifts to show that privacy can be interfered with not only through complex technology, but through our everyday technological use of computers, cell phones, etc.¹⁵ It explains that the data gathered through these everyday uses can be utilized by companies to solicit and make available advertisements for brands that the individual is predicted to possibly purchase.¹⁶ The chapter concludes by warning readers that making such future inferences and predictions can lead to said predictions being fragile and invalid because they won't be used by companies to predict the future, but will eventually be used by individuals to predict their own present.¹⁷

¹¹ See HILDEBRANDT, *supra* note 1, at 77-79.

¹² See HILDEBRANDT, *supra* note 1, at 95.

¹³ See HILDEBRANDT, *supra* note 1, at 98.

¹⁴ See HILDEBRANDT, *supra* note 1, at 110-11.

¹⁵ See HILDEBRANDT, *supra* note 1, at 121.

¹⁶ See HILDEBRANDT, *supra* note 1, at 128.

¹⁷ See HILDEBRANDT, *supra* note 1, at 137.

Chapter six argues that the society that emerged following the computational turn is one that does not suppose an individual is rational, moral, intentional, and does not rely on socially tested categorizations.¹⁸ It further asserts that this emerging society has promised to treat individuals as individuals.¹⁹ However, this chapter provides examples specifically showing how technological advancements have only made it easier for individuals to be profiled and categorized, which is contrary to the message of individuality that was originally trying to be reached. It concludes by explaining that categorizing individuals by their profiles only taints any individuality that can potentially be reached.²⁰

Chapter seven brings forth the idea of obfuscation. It addresses how the “modes of obfuscation range from the production of misleading, false or ambiguous data with the intention of confusing and adversary to simply adding to the time or cost of separating bad data from good.”²¹ This chapter focuses on the idea that as a result of obfuscation, free ridership of companies who perform data collection and contamination of that data collection is a huge problem. It urges that these problematic instances can possibly be avoided by evaluating the ethical and political solutions.²²

Chapter eight evaluates the need to enhance protection of individuals as a result of the computational turn.²³ The author analyzes the limitations surrounding the Data Protection Directive and sets forth two current plans for revising the Directive focusing on reducing the transparency of the subjects getting data collected from.²⁴ Chapter nine argues almost the exact opposite. It argues that using this technology makes its subjects at most translucent and focuses

¹⁸ See HILDEBRANDT, *supra* note 1, at 144.

¹⁹ See HILDEBRANDT, *supra* note 1, at 144-45.

²⁰ See HILDEBRANDT, *supra* note 1, at 145, 148-49.

²¹ See HILDEBRANDT, *supra* note 1, at 171.

²² See HILDEBRANDT, *supra* note 1, at 171-72.

²³ See HILDEBRANDT, *supra* note 1, at 196.

²⁴ See HILDEBRANDT, *supra* note 1, at 197-201.

on what the individual is like instead of who they are as an individual. The chapter discusses the Deleuzian concepts of de-realisation and virtualization, which creates large populations of anonymous profiles that are applied to a large population of individual human beings.²⁵ The chapter concludes by arguing that if society sees this transparency turning into a “translucent light” there must be some way of preventing this change from fully forming.

Overall, this is an intriguing book to read. The editors did an excellent job capturing the audience’s attention by having several contributors with different backgrounds write their perspectives regarding the topic. If you are a professional focusing specifically on constitutional law and/or how constitutional law can be affected by technological advancements, this book is for you. If you are an individual who has an interest in the area of constitutional law and privacy rights you would also enjoy the contents of this book. However, the only part of the book written to appeal to the average everyday person is the introduction section. It provides great intellectual insight into the world revolving around constitutional law and analyzes how privacy rights and Due Process rights can be affected by the computational turn, however, there are some points in the book that are philosophically written and hard to understand upon first read. This book does provide great insight into a rather interesting topic by taking several viewpoints and putting them together so individuals can utilize them and get professional understandings and observations in order to form their own opinions.

I would earnestly recommend this book to professionals focusing on constitutional law and professionals focusing on data collection. It was informative and provided compelling arguments involving individual’s current privacy status. It really was a great read and can be extremely helpful in crafting future laws surrounding privacy and data collection.

²⁵ See HILDEBRANDT, *supra* note 1, at 222.