

## Teaching Notes

# REGULATING THE GOOGLE SEARCH RESULTS OF YOUR NAME

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The results of a search of an individual's name are, in all practical applications, his or her public reputation. The European Union's Court of Justice responded to this reality with the "right to be forgotten." In contrast, the United States has not adopted similar protections for online reputation. This case study will examine how the European Union and the United States protect private information and the flow of information through the lenses of the historical and cultural foundations of privacy and speech, specifically addressing the control an individual has over publicly accessible information about himself or herself.

This case study was completed under the direction of Dr. Amber Díaz Pearson, The Kenan Institute for Ethics.

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## Ethical Frameworks

In discussing the right to be forgotten, or the right to control one's reputation to an extent, the ethical frameworks of justice and rights will help ground the discussion. These two frameworks are useful because they allow us to engage with the tension that may arise between distributive justice (whether benefits and burdens are fairly and justly distributed among all members of society) and individual rights (justified claims of other members of society).<sup>1</sup>

John Rawls' theory of justice is "justice as fairness": citizens are free and equal and the institutions of that society ought to treat citizens fairly and equally. His theory's First Principle affirms that all citizens in a society should have equal rights and liberties. His Second Principle maintains equality of opportunity and affirms the difference principle. The difference principle, in economic terms, means that society's institutions must be structured such that any financial inequalities are advantageous to all citizens, but especially to the greatest advantage of whoever would be otherwise most disadvantaged.<sup>2</sup>

Responding to Rawls, Robert Nozick makes the case for individual rights as the primary good in *Anarchy, State and Utopia*: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)." For Nozick, the purpose of government (a "minimal state") is to protect individuals' natural rights of person, property, and contract.<sup>3</sup> These unalienable rights arise from an individual's self-ownership, which, in turn, creates moral constraints on individuals' actions. However, a notion of the common good cannot overrule individual rights: "[N]o moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall *social* good."<sup>4</sup>

In Nozick's rights-centric framework, "a distribution is just if everyone is entitled to the holdings they possess under the distribution."<sup>5</sup> Echoing Locke's labor theory of value, he explains, "Whoever makes something ... is entitled to it. ... Things come into the world already attached to people having entitlements over them."<sup>6</sup> Against Rawls' difference principle, Nozick holds only voluntary and mutually-agreed upon exchanges are just.<sup>7</sup>

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<sup>1</sup> See Velasquez, M., Andre, C., Shanks, T., & Meyer, M. (2014, August 8). Rights. Retrieved May 17, 2016, from <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/rights/> and Velasquez, M., Andre, C., Shanks, T., & Meyer, M. (2014, August 1). Justice and Fairness. Retrieved May 17, 2016, from <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/>

<sup>2</sup> Wenar, L. (2008, March 25). John Rawls. Retrieved May 17, 2016, from <http://plato.stanford.edu/archives/win2013/entries/rawls/>

<sup>3</sup>Nozick, R. (1974). *Anarchy, state, and utopia*. New York: Basic Books. ix

<sup>4</sup> Ibid. 33.

<sup>5</sup> Ibid. 153.

<sup>6</sup> Ibid. 160.

<sup>7</sup> Ibid. 186-87.

## Discussion Questions

1. *Having Googled yourself, would you submit a right to be forgotten request if possible? Do you think your Google search results represent your reputation?*
2. *What are some consequences that could arise from the institution of the right to be forgotten in the European Union? What would be the consequences in the United States?*
3. *What information about a person should be public and what information should be private? Is an individual's private information his or her property?*
  - a. *First Amendment scholar Eugene Volokh does not support the argument that an individual's private information cannot be protected under intellectual property. Volokh argues that the protecting private information as intellectual property restricts the flow of information, which is incompatible with the First Amendment protection of free speech. If certain information cannot be shared as speech because it is private information, then it is a violation of free speech.<sup>8</sup>*
  - b. *How would Nozick's theory deal with Volokh's claims? What about Rawls' theory?*
4. *Is information a social good or is it privately owned? Is a reputation a social good or is it privately owned?*
  - a. *How could you use Nozick's theory to address this question?*
5. *Are individuals entitled to an equality of reputation? Why or why not? What would be the state's responsibilities in either case?*
  - a. *How could you use Rawls' difference principle to address this question?*
6. *Both Rawls' and Nozick's theories deal with how government institutions ought to protect rights or equality. Rawls asserts that societal institutions, like a government, should affirm the difference principle. Nozick asserts a government should protect individual's rights. The right to be forgotten ruling requires Google, a private company, to process and implement right to be forgotten requests. How would Rawls and Nozick view Google's obligations in protecting this right?*

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<sup>8</sup> Volokh, E. (2000). Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People from Speaking about You. *Stanford Law Review*, 52(5), 1049. doi:10.2307/1229510.