# CONTENTS

### Preface ix

#### Part I: Normative Foundations

1. Privacies Not Wanted 3
Everyday Meanings of Privacy 4
Privacy Law 5
Are Paternalistic Privacy Policies Justifiable? 6
A Right to Waive Privacy Protection? 8
Why Impose Unpopular Privacy? 9
Feminist Skepticism 11
Libertarian Skepticism 12
The Context 13
Neglected Rights, Forgotten Duties 18
portunity Imperative or Experience Imperative?

Opportunity Imperative or Experience Imperative? 20

Justification and Practical Limits 21

Constraining State Domination 23

Conclusion 25

## Part II: Physical Privacies: Seclusion and Concealment

2. Seclusion 29

Solitude 29

Getting Away, Hiding Out 30

Stuck at Home: Flaneur and Hausfrau 31

Sanctuary 33

Interrupted: Do Not Call 34

Put Away: Imprisonment 37

Shut Away: Quarantine 41

Conclusion 45

3. Modesty 47

Muslims in America 48

The Hijab in France 50

Undressing Women or Addressing Social Problems? 53

The Niqab in America 55

Modesty, the Analysis 60

General Modesty 60

Bodily (and Sexual) Modesty 62

Modesty Rights 65

Religious Freedom 66

Individuality 67

Uniformity and Public Service 69

A Peculiar Modesty Bias in US Law 70

A "Compelling State Interest" 72

Conclusion 77

## 4. Nudity 78

The Barnes Case: Legal Moralism 79
City of Erie: The Harm Principle 84
Canadian Cases 86
R. v. Tremblay: Community Tolerance 88
R. v. Mara: Look, Don't Touch 89
Modesty on the Run 91
Conditions of Work 93
Mutual Disrespect 93
Conclusion 95

## Part III: Information Privacies: Confidentiality and Data Protection

#### 5. Confidentiality 99

The Practice of Confidentiality 100
Relationships and Occupations 101
Documents, Records, Spaces 102
Overlapping and Conflicting Directives 103
Law, Coercion, and Justice 104
Lawmaking as Practical Compromise 104
Sanction and Deterrence 105
The Right to Say What You Know 105
Paid-for Silence 106
Flourishing in a Free Society 108

Confidentiality in Context 110

Healthcare 111

Laws Mandating Health Privacy 113

Mental Health 116

Waiver 118

Exception 120

Conclusion 121

#### 6. Racial Privacy 123

What Is Sensitive Data? 123
A Missing Jurisprudence 125
An Unpopular Referendum 130
Recognition in the Courtroom 132
Profiling in New Hampshire 132
Lessons from Georgia 134
Politics and Race in Illinois 137
Racial Privacy Outweighed 139
Ambivalence and Paradox 140
Secrets and Sensitivities 141

Persecution 144
Political Liberalism: The Question of Impartiality 145
Private Association and Civil Rights 150

Conclusion 155

## 7. The Electronic Data Give-Away 156

The Federal Privacy Statutes 156

Many Statutes, Inadequate Protection? 157

Practical Obscurity: A Swan Song After the Web 162

Give Away, Take Away 162

Lifelogs: Remembering Everything 163

Conclusion: Caring About Not Caring About Privacy 171

# 8. Popular Paternalism 173

Paternalistic Mandates 173

A Job for the Nanny State 175

The Children's Internet Privacy Law 177

Fair Information Practices 178

A Law in Action 179

#### viii Contents

# Why Age Thirteen? 181 Is the Paternalism Justified? 183 Do Young Adults Need Paternalistic Laws, Too? 190

Afterword 195

Notes 199

Index 249