

University of Massachusetts Amherst

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Introduction

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INTRODUCTION

I began this manuscript when I retired from Cornell University in 2014. Originally under contract with Cornell University Press, I failed to get a draft in by the contract's deadline, because I prioritized the consulting work I commenced under the name Mitrano & Associates, family matters, some travel, and teaching ahead of the manuscript. Meanwhile, a change in editors at CU Press also meant a change in the vision of the book, which was not as Cornell-centric as my original editor and I had first intended. For about twenty seconds I considered going to another press, but for a number of other reasons decided to self-publish. I am grateful to Marilyn Billings and Erin Jerome at UMass Amherst Library for supporting this effort.

Among those reasons was the recognition that the material was getting more stale by the minute. Such is the speed with which the connected world turns, and it seemed counter-intuitive to belabor a subject that by its own dynamic was rapidly causing the document to become obsolete. But a positive reason emerged in the midst of these considerations. I wanted to make the material available to my students.

Having taught various versions of a course on internet culture, law, and politics at Cornell University, John Cabot University in Rome, Italy, and at the University of Massachusetts Amherst in the Trust, Assurance and Cybersecurity Certificate (TACC) Program, I have used a number of books as basic texts for the course: Jack Goldsmith and Tim Wu's *Who Controls the Internet?*, Dan Solove's *Understanding Privacy*, Bruce Schneier's *Data and Goliath*, Gabriella Coleman's *Coding Freedom*, Neil Richards' *Intellectual Privacy*, Laura DeNardis's *The Global War for Internet Governance*, and sundry other titles. Every year more students are genuinely puzzled by having a professor in these areas of law, communications, and cybersecurity who assigns a book. Chalk it up to receiving academic training in the discipline of history, where the book, monograph, and manuscript are king. And so now I have a book of my own to offer at no cost.

I still believe in the notion of a book. If social networking in general, and the 2016 presidential campaign in particular, has demonstrated anything, it is how little capacity exists for the media to hold onto more than one idea in any given minute. Medium and message, it would seem, has collapsed into the proverbial "sound bite (byte?)." A book upholds the notion of a sustained argument that allows for the development of more complex thoughts.

Books mitigate against the notion that any one idea is either all or perfect. To make this assumption tips the hand of one who trucks in policy. By its very

nature, policy requires the consideration and weighing of factors. In other words, multiple concepts or ideas.

Moreover, as one who was trained in history, but also in the law, and who had to deal with people, personalities, and politics in the academic administrative work that shaped my professional life, I learned that such singular notions are a luxury that the real world cannot afford. Life is tough, complex, played out on many planes, and in more than three dimensions. Not a book, not an encyclopedia, not even the internet can encompass that. But a book at least should strive towards the discipline of thought that takes a measure of complexity into account. Woven into the narrative is an attempt to take numerous factors into account, to weigh them, and to give context. Only then can the reader evaluate the author's persuasiveness.

My concept and analytic tools are simple: The internet is a world-historical phenomenon readily comparable to that of its predecessor, the printing press. It both shapes and is shaped by ideological, religious, political, legal, cultural, social, economic, demographic factors, and historical currents. It demands attention because of the role it plays in commerce, communications, and content. Moreover, it fascinates. It acts as a canvas upon which humanity is thrown up for observation and in which people can become totally immersed. The nature of the computer-human interaction — whereby the device acts as analyst to the user-analysand, disarming inhibitions, and allowing for unrepressed expression — facilitates the transposition of all of human nature being thrown on this canvas. The intersection of technology, market, legal, and normative factors (thank you, Professor Lawrence Lessig) is grounded in the age-old dynamic of nature and culture's embrace (thank you, Professor Sherry Ortner).

My thesis is also fairly basic. Sometimes "the internet" upsets existing law, market relations, and business processes. And sometimes it does not. To be sure, anything that violates law in physical space, does so in cyberspace, and vice versa. Apart from those general observations — when, where, or how it does or does not create change — is in the details and circumstances. I argue, for example, in the first chapter on free speech that the internet is creating ironic results in this area. Its scope and amplification allows for tremendous opportunities for the broadcasting of "free speech." But that same scope and amplification may also result in some narrowing or application of traditional law, as the University of Oklahoma "racist song on the bus" event evidenced. Broadcast of the racist video on YouTube generated a public safety issue to which the President responded appropriately by expelling the students who led the chant without due process. The internet has obviously disrupted the law and social norms around privacy. U.S. and global society struggles with rules to cabin both market and government encroachment on individual privacy; so,

too, do our institutions both in the sense of protecting our missions (understanding the impact of the USA Patriot Act, for example) and executing them (institutional privacy policies and practices). In a world where law and social norms, technology and market are dynamically linked but not in sync, and are often in conflict, it is very difficult to create universal rules. Thus context becomes extremely important. Context, therefore, is an embedded part of my thesis.

I set this thesis in the world I know best: higher education. Obvious advantages and detractions attach to this approach. In any circumstance, higher education is a microcosm. It is not as removed from the world as its Ivy Tower stereotypes suggest, and it just so happens in this case to be particularly relevant because of the seminal role that some U.S. research universities played in the development of the internet as a technology and as a social and cultural concept. At the same time, higher education is distinct from other market, sociological, or institutional sectors, what some might call verticals, such as government, the private sector (meaning for-profit corporations either privately owned or publicly traded), or even K-12 education. At the outset, I acknowledge those limitations. Apart from suggesting that higher education is “of, but not in, the world,” I proactively accept the critique that higher education is too tight and rarified a focus to speak to the total experience of the internet. And I further constrain that focus to the legal and policy concepts that define the chapters of this book.

I expect that very few people (my editor, Dianne Ferriss, whom I want to thank) will read this work as a whole. Even as one of the last dinosaurs to assign books to students, I have no plans to do so for this work. Its too-tight focus does not serve the broader view we take of the internet’s canvas in the course. Also, while some topics lend themselves nicely to the higher education context — intellectual property and security, for example — others not so much: privacy, for one. Rather, most people, including my students, will look to chapters on discreet topics, such as free speech, intellectual property, privacy, and security.

Finally, I would like to thank a few people as I launch this manuscript: Polley McClure, my supervisor and mentor at Cornell; Steve Worona, an inspiration to so many of us; Brian Hawkins and Mark Luker, who guided the early years of my professional development in higher education IT; Susan Perry, mentor, impresario, and friend. Without Bill Schaff in my life I would not have ventured into information technology, and without Professor Peter W. Martin’s influence at Cornell Law School, I would not have brought those two disciplines together as a working concept. Thomas Howe and Elisabetta Morani are wonderful friends to have in this higher education life. And un grande abbraccio e un bacio to my sons, Nikko and Sam.