Affirmative: Democracy

By Kirstin Erickson

Resolved: In democratic elections, the public’s right to know ought to be valued above a candidate’s right to privacy.

The theme of this case is simple: democracy hinges on informed citizens. To put it simply, democracy means the rule of the people. To handicap democracy by keeping the public in the dark about essential information would run against everything that democracy stands for. Don’t lose sight of the first clause of the resolution as this becomes especially important in the context of elections. When we’re choosing the people we want to be in our government to represent us and lead our nation, it is vital that we have all the information we need to make the best decisions possible. When citizens cannot vote effectively, democracy ceases to be democracy. As the affirmative, you’ll have the advantage of framing the debate on your terms. While there are many nuances and side-arguments that will inevitably come up, always make sure to come back to this central theme. We must prioritize the right to know over a candidate’s right to privacy. The foundation of our democracy depends on it.

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Affirmative: Democracy

American lawyer and consumer advocate Ralph Nader once said, “Information is the currency of democracy.” The ideals of this statement ring true; without prioritizing the public’s right to know, a truly thriving democracy cannot exist. Please join me in affirming that: In democratic elections, the public’s right to know ought to be valued above a candidate’s right to privacy.

DEFINITIONS

Privacy

Alan Westin 1967 (Alan Westin was a Professor of Public Law & Government Emeritus at Columbia University, former publisher of Privacy & American Business, and former President of the Center for Social & Legal Research) Privacy and Freedom (New York: Atheneum, 1967), p. 7.

The claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.

Right to Know

Dictionary.com “Right-to-know” <https://www.dictionary.com/browse/right-to-know>

“Of or relating to laws or policies that make certain government or company data and records available to any individual who has a right or need to know their contents.”

VALUE: Democracy

Definition

Dictionary.com “Democracy” <https://www.dictionary.com/browse/democracy>

Government by the people; a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.

Reason to Prefer: Purpose of the System

The resolution itself focuses the debate on democracies with its opening clause “in democratic elections.” By using democracy as the standard for this debate, we can discover which side best upholds the government’s purpose, so the system is working the way it was intended to.

CONTENTION 1: Valuing the right to know over privacy strengthens democracy

Politicians deserve a greater degree of public scrutiny because of citizens’ democratic rights

Shaun Young 2018 (Shaun Young is a Doctor of Philosophy and researcher at the University of Toronto in the Department Of Political Science) “Politicians’ Privacy” <https://www.academia.edu/39130958/POLITICIANS_PRIVACY>

In this essay I argue that, while politicians should not be expected to forsake all hope of privacy, the voluntary character of, and responsibilities attached to, elected political office, coupled with citizens’ democratic right to choose their political representatives freely, renders it ethically legitimate for the “public” and many of the “private” elements of politicians’ lives to receive a degree of public scrutiny that greatly exceeds that experienced by their fellow citizens.

Application: Medical privacy

Robert Streiffer, Alan P. Rubel and Julie R. Fagan 2006 (Robert Streiffer is Professor of Philosophy and Bioethics at the University of Wisconsin, Madison; Alan Rubel is an associate professor in the Center for Law, Society & Justice at the University of Wisconsin, Madison; Julie Fagan is Clinical Associate Professor of Medicine at the University of Wisconsin Women's Health Center and serves on the hospital ethics committees for both the University of Wisconsin Hospital and Meriter Hospital) “Medical Privacy and the Public's Right to Vote: What Presidential Candidates Should Disclose” <https://doi.org/10.1080/03605310600860825>

Presidential candidates, like everyone else, have a right to medical privacy. For most people, this right to medical privacy altogether precludes the public from viewing their medical records. However, in virtue of the very public role of the president, the idea that the public may be kept in the dark about the health of presidential candidates is untenable. Our purpose in this article is to make it clear that candidates are morally required to waive their right to medical privacy concerning a very specific set of medical conditions. Although others have asserted a moral duty to disclose (See, e.g., Annas, 2000), the literature contains very little discussion of the basis for that requirement. We argue that it is based on the same deep democratic principle that supports the public’s right to vote, namely, that those who govern do so only with the consent of the governed. Concerns about the medical privacy of candidates must be subordinated to that democratic principle.

European Convention on Human Rights: Right to privacy can be limited because of democracy

Elena Stojanovska, and Jovana Ananievska (Elena Stojanovska worked as an international cooperation and public relations advisor at the Directorate for Personal Data Protection from 2005 to 2014. She received her masters from the Institute for Sociological, Political and Juridical Research in Skopje. She has authored numerous professional papers on personal data protection in various fields, analyses and research pertaining to the implementation of the personal data protection regulation. Jovana Ananievska graduated from the Erasmus Mundus Master’s Programme in the field of International and European Law at the Louis Pasteur Faculty of Law at the University of Rouen, France, and the Faculty of Law at the Catholic University of Portugal in Lisbon. From 2012 to 2014 she worked as a coordinator and legal advisor at the LGBTI Support Centre, a subsidiary of the Helsinki Committee for Human Rights) “PRIVACY, INFORMATION AND PUBLIC INTEREST: THE RIGHT TO PRIVACY VERSUS THE PUBLIC’S RIGHT TO KNOW” <https://iapp.org/media/pdf/resource_center/Privacy-and-Public-Interest.pdf>

According to Article 8 of the European Convention on Human Rights:

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

CONTENTION 2: Valuing privacy over the right to know weakens democracy

It is problematic if voters do not have the information they need

Robert Streiffer, Alan P. Rubel and Julie R. Fagan 2006 (Robert Streiffer is Professor of Philosophy and Bioethics at the University of Wisconsin, Madison; Alan Rubel is an associate professor in the Center for Law, Society & Justice at the University of Wisconsin, Madison; Julie Fagan is Clinical Associate Professor of Medicine at the University of Wisconsin Women's Health Center and serves on the hospital ethics committees for both the University of Wisconsin Hospital and Meriter Hospital) “Medical Privacy and the Public's Right to Vote: What Presidential Candidates Should Disclose” <https://doi.org/10.1080/03605310600860825>

On any plausible conception of democratic governance, citizens have the right to vote, and it is therefore morally problematic if voters do not have access to important facts about matters they vote on. For example, it would be problematic if citizens were unable to learn about candidates’ views on important policy matters before they choose between them. There are numerous democratic principles that underwrite the right to vote: that those who govern should do so with the consent of the governed; that the government should represent the people; and that the people should be able to hold the government accountable.

James Madison: A government of the people cannot lack the necessary knowledge

Fred H. Cate, D. Annette Fields, and James K. McBain 1994 (Fred Cate is a professor of law at Indiana University School of Law-Bloomington and Senior Fellow at The Annenberg Washington Program in Communications Policy Studies. D. Annette Fields has a J.D. from Loyola University of Los Angeles and represent clients in connection with Freedom of Information Act claims before administrative agencies. James McBain has an LL.M. from Georgetown University Law Center and J.D. from Indiana University School of Law-Bloomington) “THE RIGHT TO PRIVACY AND THE PUBLIC'S RIGHT TO KNOW: The "Central Purpose" of the Freedom of Information Act” <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1740&context=facpub>

As James Madison wrote: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."'

Negative Counter-Brief: Democracy

In order to counter this affirmative case, you’ll have to take the main theme and build on it. Since both the right to privacy and the right to know are valuable, we need to uphold them both as far as possible. No one’s going to contest the fact that it’s important for the public to make good decisions.

However, when it comes to political candidates, we should only disclose information that is absolutely necessary. Privacy should be the rule, not the exception. You’ll also have the advantage when it comes to arguing individual rights. The constitutional foundation of the right to know is contested, while the right to privacy, enshrined in the Bill of Rights, is of highest importance to democracy. To violate this right in the name of “informed decision-making” is dangerous, and we must be extremely careful about requiring anyone, even a political candidate, to disclose confidential information. Your goal is not to argue that such a violation is *never* justified, but simply that it is the exception, not the rule. If you can shift the debate to this theme, you’ll have a persuasive negative case that sticks in your judges’ minds.

The following piece of evidence supports this theme. While, to a certain extent, the public does have a right to know, it is not absolute. We cannot justify prioritizing the right to know simply by saying it’s important for democracy – the very premise of the affirmative case.

The right to know must be linked to a more specific need than simply that it is essential to democracy

Christopher Paul and James J. Kim 2004 (Christopher Paul is a senior social scientist at the RAND Corporation and professor at the Pardee RAND Graduate School; James Kim is a Research Fellow and the Program Chair of the American Politics and Policy program and the Center for Regional Studies at the Asian Institute for Policy Studies as well as an adjunct lecturer in the Executive Master of Public Policy and Administration Program at Columbia University) “Reporters on the Battlefield: The Embedded Press System in Historical Context” <https://www.jstor.org/stable/10.7249/mg200rc.14> (emphasis in original, brackets added for biographical information)

Indeed, O’Brien [David M. O’Brien, noted political scientist and Supreme Court scholar] points out, recognition of a right does not necessarily imply that an individual has the right to exercise that right on all instances—

claims to a right to know must be linked to the individual’s *need to know* about the affairs and operations of

government, but in a more specific way than the general claim that an informed citizenry is essential to a

representative democracy.

A candidates’ right to privacy is no different from any other person’s

Kirsty Hughes 2019 (Dr Kirsty Hughes is a University Senior Lecturer specializing in Human Rights and Public Law. She is a member of the Centre for Public Law, University of Cambridge, and a Fellow of Clare College where she is a Director of Studies.) “THE PUBLIC FIGURE DOCTRINE AND THE RIGHT TO PRIVACY” <https://doi.org/10.1017/S000819731900028X>

The values underpinning the right to privacy of public figures are no different from those of other persons and there are other better mechanisms of accounting for societal interests in freedom of expression. We should therefore reject the idea that public figures have fewer or weaker privacy rights or that the process of dealing with their rights is different.

A/T European Convention on Human Rights

ECHR does not necessarily prioritize the right to know over the right to privacy

Michael G. Doherty 2007 (Michael Doherty was Principal Law Lecturer at Lancashire Law School, University of Central Lancashire, United Kingdom) “POLITICIANS AS A SPECIES OF ‘PUBLIC FIGURE’ AND THE RIGHT TO PRIVACY” <http://www.sbc.org.pl/Content/11963/doherty.pdf>

Article 8(2) ECHR though establishes that the privacy right is not absolute; ‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of... the protection of the rights and freedoms of others’. These rights and freedoms will include the freedom of expression of the defend- ant. Article 10 ECHR provides that ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference ...’. Article 10 ECHR is similarly non-absolute and allows restrictions, on the same basis as Article 8 ECHR, ‘for the protection of the reputation and rights of others’. In circumstances like this, there is no presumptive priority for any one Article and the particular exercise of the competing rights in the specific circumstances of the case have to be carefully weighed (Ovey and White, 2006: p.6). The familiar proportionality test of ECHR law normally involves a close scrutiny of the broader societal interest, such as public health, invoked to restrict the Convention right. The national law must be clear and necessary and only go as far as is required to secure the societal interest. In circumstances where there are two competing Convention rights, the question is one of a fair balance between them (Ovey and White, 2006: p.6). This requires identification and correct assessment of all relevant factors, including, where applicable, the status of the applicant as a public figure and in the case of a politician as a particular archetype of ‘public figure’.

Critique of ECHR: Does not determine human rights and doesn’t always define them well

Daniel Hannan 2015 (Daniel Hannan is a British writer and journalist. He is the founding President of the Initiative for Free Trade and was a member of the European Parliament for 21 years) “The case against the European Convention on Human Rights) <https://capx.co/the-case-against-the-european-convention-on-human-rights/>

A lot of people evidently believe – or at least affect to believe – that Britain was somehow “given” its rights by the Convention, or else by the Human Rights Act of 1998, which incorporated the ECHR into national law. Amnesty International, for example, has taken out newspaper advertisements saying “Don’t Scrap Our Human Rights” – a message rather contradicted by the text of the ad, which correctly points out that “a government cannot give human rights or take them away”.

Human rights have become a protean and inchoate concept. For some of their advocates, they are simply a way of elevating political aims to a grander plane, thereby intimidating their opponents. For example, the EU’s Charter of Fundamental Rights and Freedoms guarantees our right to “strike action”, “free healthcare” and “affordable housing”. These may be perfectly good ambitions, but in what sense do they constitute basic, inalienable freedoms?

If you think about it, the “human” bit is otiose. All rights by definition apply to humans, since – unlike oysters or grasshoppers – we are legal persons, able to enter into relations with other persons mediated by the law. Governments may create a statutory claim to something – paid leave, say, or religious schools or, indeed, “affordable housing” – which may then be enforced by the courts. Fine. The trouble with vaguely worded charters that presume to sit above such statutory rights is that, in the hands of activist judges, they can be used to mean almost anything.

EU Charter of Fundamental Rights supplements ECHR with broad protections of personal data

Elena Stojanovska, and Jovana Ananievska (Elena Stojanovska worked as an international cooperation and public relations advisor at the Directorate for Personal Data Protection from 2005 to 2014. She received her masters from the Institute for Sociological, Political and Juridical Research in Skopje. She has authored numerous professional papers on personal data protection in various fields, analyses and research pertaining to the implementation of the personal data protection regulation. Jovana Ananievska graduated from the Erasmus Mundus Master’s Programme in the field of International and European Law at the Louis Pasteur Faculty of Law at the University of Rouen, France, and the Faculty of Law at the Catholic University of Portugal in Lisbon. From 2012 to 2014 she worked as a coordinator and legal advisor at the LGBTI Support Centre, a subsidiary of the Helsinki Committee for Human Rights) “PRIVACY, INFORMATION AND PUBLIC INTEREST: THE RIGHT TO PRIVACY VERSUS THE PUBLIC’S RIGHT TO KNOW” <https://iapp.org/media/pdf/resource_center/Privacy-and-Public-Interest.pdf>

Article 8 of the EU Charter of Fundamental Rights concerns the protection of personal data and is a supplement of sorts to the European Convention on Human Rights by covering more broadly the right the privacy.

According to the EU Charter of Fundamental Rights:

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

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 down 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.

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

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