Negative: Human Rights

By Zachary Beddingfield

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

This case emphasizes the significance of the fundamental human rights, which you argue includes privacy and argues the danger of implementing policy designed to help society at the cost of these rights. Your argument draws on the foundational themes behind the constitution that government should not encroach or try to justify limiting rights. You’ll find quotations and applications that make this argument and provide examples of both policy failure and success.

The second contention provides depth to your argument by attacking the counter-argument that the right to know is itself a right, introducing the terminology of negative and positive rights, or those rights that merely allow others do not encroach on your freedoms versus those that create an obligation on others to do something for you, respectively. The citations explain why positive rights shouldn’t be a reason to limit the negative ones like privacy, which means that whether the right to know is a true right or positive social measure, it still doesn’t justify a restriction on privacy. To win with this case, you’ll want to emphasize the importance of maintaining our human rights and the danger of trading them for beneficial policy.

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Negative: Human Rights

“They who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”

* Benjamin Franklin

Franklin, Benjamin. “Memoirs of the Life &amp; Writings of Benjamin Franklin.” Goodreads, 1818, Accessed 18 July 2020. The book was written by Benjamin Franklin, published in 1818, with this excerpt cited in Goodreads. <https://www.goodreads.com/work/quotes/73804176-memoirs-of-the-life-writings-of-benjamin-franklin>.

Because the resolution asks us to require candidates give up their privacy, and because rights should not be sacrificed for the common good, I disagree with the resolution that the public’s right to know ought to be valued above the candidate’s right to privacy within democratic elections.

DEFINITIONS

Privacy

Sharp, Tim. “Right to Privacy: Constitutional Rights &amp; Privacy Laws.” LiveScience, Purch, 12 June 2013, Accessed 9 July 2020. <https://www.livescience.com/37398-right-to-privacy.html#:~:text=The%20right%20to%20privacy%20refers,some%20amendments%20provide%20some%20protections.>

The right to privacy refers to the concept that one’s personal information is protected from public scrutiny. U.S. Justice Louis Brandeis called it “the right to be left alone.” While not explicitly states in the U.S. Constitution, some amendments provide some protections.

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.

Applied to candidates, the public’s right to know is the right to make the candidate’s private information public.

RESOLUTION ANALYSIS: THE CONFLICT

Today we’ve been asked to compare the right to know and the right to privacy, asking which ought to be valued higher. Often, the right to know can be claimed without interfering with privacy. Because not all information is private, we can know plenty of things about the candidates we are voting for without infringing on their rights. However, this tells us nothing about which right, the right to know or right to privacy, ought to be *valued* highest. To compare, we need to look at when these two rights come into conflict. This is the point where the citizen’s claiming the right to know seek to reveal information about the candidate that *was* private, or when the right to know seeks to override and revoke the right to privacy for the better good. The right to know can only be said to be valued above the right to privacy if it overrides the right to privacy, and if privacy takes precedent than the right to know is not being valued higher. Thus, affirmative must prove that the right to know should take precedence, allowing the public to strip candidates of their right to privacy.

VALUE: Human Rights

Definition

“Definitions and Classifications.” Icelandic Human Rights Centre, Accessed 9 July 2020. [www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/definitions-and-classifications](http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/definitions-and-classifications).

Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being.

Reason to Prefer: Fundamental Purpose of Government

Purpose of Government (Locke)

Tuckness, Alex. “Locke’s Political Philosophy.” Stanford Encyclopedia of Philosophy, Stanford University, 11 Jan. 2016, Accessed 9 July 2020. <https://plato.stanford.edu/entries/locke-political/>.

John Locke (1632–1704) is among the most influential political philosophers of the modern period. In the Two Treatises of Government, he defended the claim that men are by nature free and equal against claims that God had made all people naturally subject to a monarch. He argued that people have rights, such as the right to life, liberty, and property, that have a foundation independent of the laws of any particular society. Locke used the claim that men are naturally free and equal as part of the justification for understanding legitimate political government as the result of a social contract where people in the state of nature conditionally transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property. Since governments exist by the consent of the people in order to protect the rights of the people and promote the public good, governments that fail to do so can be resisted and replaced with new governments. Locke is thus also important for his defense of the right of revolution. Locke also defends the principle of majority rule and the separation of legislative and executive powers. In the Letter Concerning Toleration, Locke denied that coercion should be used to bring people to (what the ruler believes is) the true religion and also denied that churches should have any coercive power over their members. Locke elaborated on these themes in his later political writings, such as the Second Letter on Toleration and Third Letter on Toleration.

America was Founded to Protect Individual Rights

“The Bill of Rights: A Brief History.” American Civil Liberties Union, Accessed 9 July 2020.

 <https://www.aclu.org/other/bill-rights-brief-history#:~:text=The%20nation's%20founders%20believed%20that,the%20protection%20of%20individual%20rights.&text=In%20this%20sense%2C%20the%20idea,most%20traditional%20of%20American%20values.>

From these experiences came a uniquely American view of power and liberty as natural enemies. The nation’s founders believed that containing the government’s power and protecting liberty was their most important task, and declared a new purpose for government: the protection of individual rights.

The protection of rights was not the government’s only purpose. It was still expected to protect the community against foreign and domestic threats, to ensure economic growth, and to conduct foreign affairs. It was not, however, the government’s job to tell people how to live their lives, what religion to believe in, or what to write about in a pamphlet or newspaper. In this sense, the idea of individual rights is the oldest and most traditional of American values.

CONTENTION 1: Stripping Rights for the Common Good is Unjustified

Government Should Not Recklessly Sacrifice Rights for the Common Good

Henkin, Louis. The Age of Rights. Columbia Univ. Press, 1990. Excerpt Available At: Accessed 7 July 2020.

<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/1-the-inquiry-in-context/justifying-limits-on-rights-and-freedoms/>.

Government may not do some things, and must do others, even though the authorities are persuaded that it is in the society’s interest (and perhaps even in the individual’s own interest) to do otherwise; individual human rights cannot be sacrificed even for the good of the greater number, even for the general good of all. But if human rights do not bow lightly to public concerns, they may be sacrificed if countervailing societal interests are important enough, in particular circumstances, for limited times and purposes, to the extent strictly necessary.

Human Rights Should Not be Sacrificed on the Altar of the Fight against Terrorism

Brasseur, Anne. “Parliamentary Assembly President Speech.” Parliamentary Assembly of the Council of Europe, 10 Dec. 2015, Accessed 9 July 2020. Especially applicable against affirmative National Security Arguments assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=5943&lang=2

On Human Rights Day, political leaders and parliamentarians should take a step back from the political turmoil and look at the world through the prism of human rights. The Council of Europe works tirelessly to uphold and protect human rights. Since the founding fathers imagined and then created the Council of Europe, much has been accomplished building on the centerpiece of European human rights protection, the European Convention on Human Rights and its Court. However, upholding, protecting and promoting Human Rights is not just a full-time job, it is 24 hour duty and responsibility. Human Rights are violated or threatened every day and sometimes we may feel helpless in the face of the challenges, be they Syria, the refugee crisis, the economic crisis, conflicts amongst our own member states, the rise of hate and xenophobia or terrorism.

Combatting terrorism as one of the numerous challenges. It brutally attacks all our freedoms. It attacks freedom of speech by targeting and trying to muzzle free media. It attacks freedom of religion by abusing and hijacking religious beliefs. Terrorism also attacks freedom of movement, it attacks the economy and people’s livelihood, and it takes life indiscriminately. Facing such great threats, we have to be even more watchful not to sacrifice human rights and fundamental freedoms. The temptation is strong to try and reassure our citizens by resorting to greater security measures, sometimes at the cost of the rights and freedoms of each and every one of us. We have to be honest and clear: there is no free society without threats to security. Human rights should not be sacrificed on the altar of the fight against terrorism – this is precisely what the terrorists want! We must not give this to them.

Application: The Patriot Act

The Patriot Act Violated Privacy for Common Good

Shamsi, Hina, and Alex Abdo. “Privacy and Surveillance Post-9/11.” American Bar Association, 1 Jan. 2011, Accessed 7 July 2020. [www.americanbar.org/groups/crsj/publications/human\_rights\_magazine\_home/human\_rights\_vol38\_2011/human\_rights\_winter2011/privacy\_and\_surveillance\_post\_9-11/](http://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol38_2011/human_rights_winter2011/privacy_and_surveillance_post_9-11/)

Americans’ right to privacy is under unprecedented siege as a result of a perfect storm: a technological revolution; the government’s creation of a post-9/11 surveillance society in which the long-standing “wall” between surveillance for law enforcement purposes and for intelligence gathering has been dismantled; and the failure of U.S. laws, oversight mechanisms, and judicial doctrines to keep pace with these developments. As a result, the most sweeping and technologically advanced surveillance programs ever instituted in this country have operated not within the rule of law, subject to judicial review and political accountability, but outside of it, subject only to voluntary limitations and political expedience.

The Patriot Act is an Ends Justifies the Means of Overriding Constitutional Protections

Levy, Robert A. “The USA Patriot Act: We Deserve Better.” Cato Institute, 1 Nov. 2001, Accessed 7 July 2020. [www.cato.org/publications/commentary/usa-patriot-act-we-deserve-better](http://www.cato.org/publications/commentary/usa-patriot-act-we-deserve-better).

If you think the Bill of Rights is just so much scrap paper, and the separation of powers doctrine has outlived its usefulness, then the USA PATRIOT Act, passed overwhelmingly on Oct. 25, is the right recipe to deal with terrorists. On the other hand, if you are concerned about Fifth Amendment protection of due process, and Fourth Amendment safeguards against unreasonable searches and seizures, then you should be deeply troubled by the looming sacrifice of civil liberties at the altar of national security.

Application: British Anti-Terror Ruling

Alvarez, Lizette. “British Court Strikes Down Antiterror Act.” The New York Times, 17 Dec. 2004, Accessed 13 July 2020. <https://www.nytimes.com/2004/12/17/world/british-court-strikes-down-antiterror-act.html>.

Britain’s highest court ruled Thursday [December 16, 2004] that the government could not continue to indefinitely detain foreigners suspected of terrorism without charging or trying them, saying the practice violated European human rights conventions.

…

The law lords deemed the detentions a clear violation of the European Convention on Human Rights, which applies to all European Union nations, in a ruling that removes one of the government’s most significant antiterrorism tactics.

The ruling paralleled a June decision by the United States Supreme Court that those regarded as enemy combatants at Guantánamo Bay, Cuba, must be given the ability to challenge their detention before a judge or other neutral “decision maker.” That ruling stated, “A state of war is not a blank check for the president.”

CONTENTION 2: Rights Should Protect People, Not Give Them Power Over Others

Positive Rights are Dangerous Rights

Machan, Tibor R. “The Perils of Positive Rights: Tibor R. Machan.” Foundation for Economic Education, 1 Apr. 2001, Accessed 7 July 2020. <https://fee.org/articles/the-perils-of-positive-rights/>.

One of the most powerful ideas opposed to the free society is a notion political philosophers call “positive rights.”

…

Natural rights—or, as they have been un-euphoniously dubbed, “negative rights”—pertain to freedom from the uninvited interventions of others. Respect for negative rights requires merely that we abstain from pushing one another around. Positive rights, by contrast, require that we be provided with goods or services at the expense of other persons, which can only be accomplished by systematic coercion. This idea is also known as the doctrine of entitlements; that is, some people are said to be entitled to that which is earned by other people.

“Positive rights” trump freedom. According to this doctrine, human beings by nature owe, as a matter of enforceable obligation, part or even all of their lives to other persons. Generosity and charity thus cannot be left to individual conscience.1 If people have such positive rights, no one can be justified in refusing service to others; one may be conscripted to serve regardless of one’s own choices and goals.

Positive and Negative Rights are Incompatible

“Positive and Negative Rights.” Norwegian Capitalist Party, Accessed 7 July 2020. The article listed points in a segmented format, with the short phrases below representing section titles. <https://www.liberalistene.org/knowledge/positive-and-negative-rights/>.

Negative Rights

Negative rights, or negative freedom, means freedom from something. Your negative right imposes a negative duty on others, meaning a duty to do nothing and not interfere.

My negative freedom requires only that you respect the right by not preventing me in doing it. Examples of negative rights are the right to live, to be free, freedom of speech, freedom of religion, freedom from violence, freedom from slavery, and property rights.

Positive Rights

Positive rights, or positive freedom, means freedom to something. Thus, your positive right places a positive duty on others, i.e. a duty to offer something or act in a certain way.

My positive right requires you to respect it by complying with it. Examples of positive rights are the rights to free schooling, free healthcare, a job, and a minimum wage.

They are Incompatible

On a societal level, these two types of rights are incompatible. For instance, you cannot both have a right to be free, while still being forced to work for others (this does happen, obviously, but it is contradictory and inconsistent). Today, all states and the UN have a mixture of positive and negative freedoms among their human rights (if they have any at all).

Affirmative Counter-Brief: Human Rights

The strategy I recommend to counter this case is arguing that rights can be limited, at least for specific, consenting groups, to protect national security or some other metric, which could be your affirmative value. The evidence below will help you prove this using consensus, casting doubt on how well the negative’s logic can stand in the real world. A second approach is to point out ways we regularly do give up rights without bad behavior, but these can be argued as injustices themselves, and you would need to convince the judge that those limitations are valid.

You can combine this argument with the philosophy that rights can be and are given up to enable government to better secure your remaining rights, which is cited in this case under social contract theory in proving a value of human rights. This means, if you can prove that candidates giving up their right to privacy is necessary for government to continue protecting the citizens’ human rights, then you’ve justified the right to know being valued above the right to privacy not because it promotes common good but because it would be fundamentally necessary to the government functioning and protecting the rights of its people.

Government Can Limit Rights for National Security

Callamard, Agnes. “Freedom of Expression and National Security: Balancing for Protection.” Global Freedom of Expression, Columbia University, Dec. 2015, Accessed 9 July 2020. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/01/A-Callamard-National-Security-and-FoE-Training.pdf>.

International human rights law recognizes that sometimes it is necessary to limit individual rights to protect national security or respond to situations of public emergency. However, such an emergency cannot be used to suspend some rights, which cannot be suspended in any circumstances. They include the freedom of thought, the right to life, and the right to be free from torture or cruel, inhuman, and degrading treatment.

Human rights agencies acknowledge the need to restrict rights

“Issues of Freedom : Restrictions on Individual Liberties.” Accessed 11 July 2020. Bracketed information is provided for context by Monument staff to be read in introducing the citation. <https://www.humanium.org/en/fundamental-rights/freedom/restrictions/>.

[when writing on the importance and significance of rights, Humanium, a children’s human rights agency, notes this about the limits of rights:]

These liberties, recognized as belonging to both adults and children, are commonly known as fundamental rights—that is to say, rights which the population is entitled to fully enjoy without government intrusion. Nevertheless, the proper exercise of these liberties, taken in conjunction with the need for public order, national security, the preservation of moral values, as well as respect for the rights of one’s fellowman—all of this necessarily entails that some restrictions be placed upon these liberties.

Only the freedom of thought, conscience and opinion are subject to no real restriction. Each and every person is free to think what he or she likes without fear of government interference so long as his or her opinions remain private.

UN International Covenant on Economic, Social, and Cultural Rights: Article 4 on limiting rights

“International Covenant on Economic, Social and Cultural Rights.” Office of the High Commissioner, United Nations Human Rights, 16 Dec. 1966, Accessed 11 July 2020. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Corruption leads to human rights abuses

“Corruption and Human Rights.” Office of the High Commissioner, United Nations Human Rights, Accessed 18 July 2020. Text is split into many short paragraphs. All excerpts include their complete paragraphs, with other sections cut for length. <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>.

International human rights mechanisms, including the Human Rights Council, have paid increasing attention to the negative impact of corruption on the enjoyment of human rights and made numerous recommendations to Member States with the aim to prevent and suppress corruption.

Depending on the level, pervasiveness and form of corruption, corruption can have devastating impacts on the availability, quality and accessibility – on the basis of equality – of human rights-related goods and services. Moreover, it undermines the functioning and legitimacy of institutions and processes, the rule of law and ultimately the State itself.

…

While acts tainted by corruption can constitute human rights violations, corruption itself is best seen as a structural obstacle to the enjoyment of human rights.

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Shamsi, Hina, and Alex Abdo. “Privacy and Surveillance Post-9/11.” American Bar Association, 1 Jan. 2011, Accessed 7 July 2020. www.americanbar.org/groups/crsj/publications/human\_rights\_magazine\_home/human\_rights\_vol38\_2011/human\_rights\_winter2011/privacy\_and\_surveillance\_post\_9-11/

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“Positive and Negative Rights.” Norwegian Capitalist Party, Accessed 7 July 2020. The article listed points in a segmented format, with the short phrases below representing section titles. https://www.liberalistene.org/knowledge/positive-and-negative-rights/

Callamard, Agnes. “Freedom of Expression and National Security: Balancing for Protection.” Global Freedom of Expression, Columbia University, Dec. 2015, Accessed 9 July 2020. https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2016/01/A-Callamard-National-Security-and-FoE-Training.pdf

“Issues of Freedom : Restrictions on Individual Liberties.” Accessed 11 July 2020. Bracketed information is provided for context by Monument staff to be read in introducing the citation. https://www.humanium.org/en/fundamental-rights/freedom/restrictions/

“International Covenant on Economic, Social and Cultural Rights.” Office of the High Commissioner, United Nations Human Rights, 16 Dec. 1966, Accessed 11 July 2020. https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

“Corruption and Human Rights.” Office of the High Commissioner, United Nations Human Rights, Accessed 18 July 2020. Text is split into many short paragraphs. All excerpts include their complete paragraphs, with other sections cut for length. https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx