

## Privacy and democracy

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The meaning of privacy has been frequently disputed in the philosophical and legal literature since Warren and Brandeis first argued for it as a distinct and important personal and social value. Nevertheless, while the meaning of privacy is held to be vague, there is general agreement that Warren and Brandeis were correct in their assessment of its value. Theorists of democracy, on the other hand, have been ambivalent towards the realm of the private. This paper interrogates the intersection between privacy and democracy, questioning the place of privacy as a distinctly democratic value.

### Introduction

My concern in this paper is with the place a right to privacy has in a normative account of democracy.<sup>1</sup> One difficulty with my topic is that both privacy and democracy are highly contested ideas and so I am liable to become entangled in too many matters of definition. I am going to attempt to evade this problem by offering an account of privacy that addresses, I think, the essential worry that advocates of privacy express and one that is not overly controversial. This will not be a full definition of privacy but a partial one suited to my purposes here. With this account in hand I will then show how three alternative views of democracy place different values on privacy. I will end by arguing that only what I call full deliberative democracy *requires* a right to privacy as a central part of its democratic vision and, consequently, offers a democratic argument for the right to privacy.

Although many countries, states, and international organisations have or advocate for a right to privacy, the idea that privacy is valuable is by no means universally accepted. Some have argued that privacy is a dated notion incompatible with modern technology, while others have argued for its limited value. I think it is important at the beginning to distinguish between what privacy amounts to and what its value is. What we value about privacy will change according to how we understand it. However, there is no easy way to say what privacy means, as is evident in the extensive philosophical and legal literature on just this topic, beginning in 1890 with Warren and Brandeis's law journal article called the "Right to Privacy". There they argued that the right to privacy was a right to be "let alone" (Warren and Brandeis 1890, 205) and free from the invasion of the "sacred precincts of private and domestic life" (Warren and Brandeis 1890, 196). This definition of privacy has some obvious flaws. It is neither a necessary nor a sufficient condition for privacy. It confuses solitude with privacy and, as Judith Thomson notes, I can fail to let you alone by dropping a brick on your head, but in doing so I have not violated your privacy (Thomson 1975, 295). Nevertheless, it does capture one aspect of what privacy means by pointing to the idea of limited or restricted access as an important part of its definition. For the purposes of this paper, however, I will focus on a second feature of privacy that has less to do with encroachment into personal domains and more to do with restrictions on what other people and institutions *know* about a person. On this account, one is in a state of privacy with respect to a piece of information to the extent that others are not in a cognitive relationship with it. In other words, the fewer people who know some fact about me, the more private that information is. If no-one else knows it, then it is absolutely private.

1 See for example, Rachels (1975); Thomson (1975); Paul et al. (2000); Matthews (2008); Davis (2009).

This is the “epistemic account of privacy” which takes privacy to be a relation between a subject, some personal proposition, and some set of individuals.<sup>2</sup> To the extent that the members of this latter set are ignorant of a proposition about a subject, then that subject has privacy with respect to that proposition. It would take some time to set out this account in full and to explore its consequences. For my purposes it serves as a descriptive account of what I mean by the claim that information is private. As I mentioned, this is a descriptive account of privacy and it thus says nothing about its value. It is a neutral definition.

To argue that one has a right to privacy is to make the claim that having others be ignorant of personal propositions about you is valuable in some sense. Since there are obvious cases in which someone may value the ignorance of others for bad, immoral, or destructive reasons, the claim of a right to privacy must also assert that privacy is valued for positive, and broadly moral reasons. There is no shortage of candidates in the literature for what such reasons may be. I will list a few here and explore some more fully in later discussion. It has been argued that privacy is essential for making and sustaining intimate relations, for allowing solitude, the freedom of thought and conversation, the development of autonomy, for avoiding the “chilling effect” of surveillance, and the mental anguish of embarrassment, harmed reputations and lack of respect. It has been argued that privacy is necessary to secure oneself against blackmail, the distortion of one’s public image, the disclosure of damaging information, and the appropriation of one’s identity. Finally, privacy has been seen to be necessary to avoid what American legal scholars call “decisional interference”, where the state substitutes its judgment for the judgment of private individuals. This has been the basis of a number of US Supreme Court decisions affecting, for example, a woman’s right to abortion, as well as striking down state anti-sodomy laws.<sup>3</sup>

What matters though is that the claim to a right to privacy is a positive evaluation of the right to not have others know certain things about oneself. Furthermore, if the right is to be effective, it has to be a right for an individual to *conceal* information from others. In other words, an individual has the right to *actively* prevent others from coming to know things about him or herself. Therefore, to summarise, the right to privacy positively values the activity of concealing information from others. The question for this paper is then, whether the right to privacy understood in this way, is a value for normative democratic theory, i.e. whether the values of democracy and the value of privacy are compatible or antagonistic.

Before turning to this question, I want to make a few remarks on this partial definition of privacy to forestall objections. Firstly, it is a “control” account of privacy that takes having control over one’s information to be essential to the correct definition of privacy. The standard objection to control theories of privacy is that a person could choose to reveal all of their information (the so-called exhibitionist objection) and yet on the control account she would still have her privacy. However, this objection mistakes the condition of privacy with the normative right to privacy. A person who waives her right to privacy by revealing all her information (or all that anyone wants to know) ceases to be in a state or condition of privacy but retains her right to privacy, in just the same way that a landowner who allows anyone to roam freely on his land retains his right to the property along with a right (not exercised) to exclude others. Secondly, as with any right, a right to privacy may be limited by other rights and by urgent public interests. There are numerous obvious examples of instances where one’s right to conceal information is subordinated to, for example, the need to prevent some great public harm. The fact that the right to privacy is limited in this way does not diminish its value or status as a right. Finally, I want to reiterate that this is not a complete account of privacy, but one that captures what is essential about the right to privacy for the purpose of testing its worth in democratic theory.

### Three understandings of democracy

I want to distinguish between three understandings of democratic politics. These will be necessarily rough sketches but will serve the purpose of showing how the right to privacy is regarded differently

2 Here I rely on Blaauw (2013).

3 See Solove (2006).

by each of them. The three understandings are, first, what I will call aggregative democracy (or economic democracy), second, Rousseauian democracy (or common good, republican democracy), and finally, full deliberative democracy (FDD). I am going to argue that the latter, full deliberative democracy, best accommodates the right to privacy, whereas the former understandings of democracy are either hostile or indifferent to citizens' privacy.

Before spelling out these conceptions of democracy, I want to identify two elements shared by all three, to some degree. They are all committed to some measure of public justification. I take this to be the requirement that political statements in a democracy are more than mere statements of personal preference and that citizens seek to justify their political utterances by offering reasons; reasons they take to be acceptable, in principle, to at least some others. This is grounded in the notion that in a democracy, of whatever sort, power is exercised by the state on the basis of a claim to legitimacy, and the legitimacy of a state rests ultimately on the extent to which its actions and decisions are seen by its subjects to be justified. It is important to note here that what counts as an adequate reason will differ among the three different conceptions of democracy I sketch below—from the most scant and shallow of justifications to the most robust requirements of strict Rawlsian public reason. It is part of my argument that the stance of democratic theory towards the right to privacy depends, in part, on its conception of public justification.

The second element I identify is the assumption of a bifurcated self. Such a self has been present in moral and political philosophy since its beginnings. The idea of a division between an animal and a rational self, a self of inclinations and a moral self, a subject and a citizen, is one that is deeply embedded in the very notion of a normative democratic politics. That we can, as it were, transcend our brute individual preferences and participate as political equals in the exercise of power is the premise on which rests the idea of democratic legitimacy. One common way to conceptualise the divided self is to think of the political self as the public self and the non-political self as the private self. The way in which a democratic conception conceives of the relation between the public self and the private self will have obvious consequences for its stance towards the right to privacy.

### ***The aggregative conception of democracy***

An aggregative conception of democracy understands the legitimacy of the exercise of state power to rest on aggregating the preferences of its citizens and seeking to maximise the satisfaction of their highest ranked preferences (Downs 1957; Schumpeter 2008). Furthermore, in any democracy we must assume citizens' preferences are subject to the influence of reasons proposed and rebutted by other citizens. In other words, in keeping with an aggregative or economic notion of democracy, we must assume a marketplace of ideas in which justifications are offered, sometimes accepted, and often rejected. While this conception of democracy is often used only as a foil for other, more philosophically sophisticated, conceptions, there are those who defend it, and, I think, it is a rough estimation of common, pre-reflective, notions of what democracy ought to be.<sup>4</sup>

One influential legal philosopher who has written about privacy and who adopts an economic point of view is Richard Posner. He takes a dim view of the value of privacy arguing that "...secrecy is entitled to legal protection where it is necessary to protect an investment in the acquisition of socially valuable information...but not where it serves to conceal facts about an individual that, if known to others, would cause them to lower their valuation of him as an employee, borrower, friend, spouse, or other transactor" (Posner 1978, 2). He thinks most instances of privacy claims are attempts to manipulate information that result in socially negative outcomes. From the position of economic analysis where the free flow of information increases efficiency by making decisions better informed, it is easy to see why concealing information would be disvalued. I want to sidestep some obvious objections to this view of privacy and instead apply it to the case of aggregative democracy.

If we understand democratic deliberation as a competition between ideas for the purpose of aggregating citizens' preferences, then concealing information becomes problematic. The

4 For a critical account of aggregative democracy from the viewpoint of deliberative democracy, an account of democracy that will be defended later in this paper, see, for example, Benhabib (1996); Habermas and Rehg (1998); Young (2002); Goodin (2005); Held (2006).

legitimacy, and thus the social worth, of the aggregation is only as good as the authenticity of the preferences expressed. However, if some citizens are manipulating the market of ideas by concealing information, then the social worth of the aggregation is diminished. Paraphrasing Posner, we might say that where a legal right to privacy “serves to conceal facts about an individual that, if known to others, would cause them to lower their valuation of him”...as an interlocutor in democratic political debate, then the value of that right is severely diminished, if not eliminated.

Adopting the economic stance also shows that citizens in an aggregative democracy would have an ambivalent attitude towards privacy. Assuming that citizens are rational actors determined to maximise their own highest preferences, then they would have an interest in knowing as much as possible about their interlocutors while concealing information about themselves that might lower their standing in the eyes of others, and thus lower their bargaining position. Privacy thus becomes seen as a source of manipulation. Either one is manipulated by others who mask their unwelcome motives and beliefs, or one is manipulating others by masking one’s own motivations and beliefs for one’s own political advantage.<sup>5</sup>

Therefore, granting a right to privacy on this view of democracy is not obviously socially maximising and nor is it always individually maximising. Someone persuaded by the aggregative conception of democracy would have, at best, a suspicious attitude towards the political value of privacy and the wisdom of granting citizens a robust right to privacy. Of course, there may be other socially maximising consequences to granting a right to privacy unconnected to its political value. However, my focus is on whether the right to privacy fits with democratic theory, and when the latter is given an economic shape, then the answer is largely “no”.

I want to make one further point before moving on to the next section. I said earlier that the aggregative view is one that fits most obviously with a common understanding of how democracy should operate—that the will of the people, or at least the aggregated preferences of the people, should prevail and shape the political agenda of elected politicians. It remains true that in an aggregative democracy the justifications offered for political statements must be in some sense public reasons, i.e. ones that make a claim to justification by appealing to reasons others could, in principle, accept. The aim of citizens in the market place of democratic ideas is to align as many others with one’s own preference set (and these preferences need not be egoistic, of course). Political ideas and statements must therefore appeal to others for reasons that they find persuasive. Now, since democracy here is a competition to see whose preferences win out, public justifications can easily be seen to be masks that disguise the true motives of one’s fellow citizens. Indeed, it would be best and quite rational to be deeply sceptical of the political utterances of one’s fellow citizens. The bifurcation of the self into a private self and a public self is here rightly regarded as a way of obscuring what is really going on. The public self is thus seen as a mask that hides the true person, the person laden with interests and preferences who manipulates the public discourse of democracy to better further those interests. A right to privacy fixes the mask in place and makes the task of positioning oneself politically much more difficult because the quality of information available is unreliable. I would go further and suggest that the reason why identity has become so prominent in democratic politics is partly because of this way of conceiving the relation between citizens in a democracy. Who a person is, rather than what they say, matters because identity is a quick way to get at the private interests, disguised by public political discourse. Identity is, therefore, an efficient pathway from public utterance to private motivations. We can think of a person’s identity then as a translation of the public into the private.

While I think this diagnosis might resonate with our real experience of democratic politics, I also think that the realist view of democracy is a deeply flawed understanding of what an adequate normative theory of democracy should look like. However, I think it is instructive because it reveals how a not uncommon view of democracy results in a deep suspicion of a strong right to informational privacy and, in a connected way, a deep suspicion of public justifications. I think

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5 This is different from Simone Chambers’s notion of plebiscitory reason which is public reason that is poorly done because of the glare of publicity. The use of public reason in aggregative democracy is always strategic. See Chambers (2004).

these suspicions corrode the worth of democracy in the eyes of citizens and that there are better accounts of democracy and ones that better fit with a robust right to privacy.

### **Rousseauian democracy**

What I have called Rousseauian democracy makes the sharpest distinction between public and private selves and has the most stringent requirements for political justification. Rousseau famously distinguishes between the private will, the “sum of individual desires”, and the general will, the sovereign will to be aimed at the common good (Rousseau 1968, 72). He writes, “For every individual as a man may have a private will contrary to, or different from, the general will that he has as a citizen” (Rousseau 1968, 63). Here we see the bifurcated self cashed out as political, public citizen versus a private, acquisitive subject. As we know, Rousseau, following other republican philosophers, including Aristotle (and I would include Arendt here as well), sees the political self as the authentic human self, in contrast to the animal-like self focused only on its own particular needs and desires. It is a consequence of this view of the self that when the subject’s desires contaminate the deliberations of the citizen, then the sovereign will is “corrupted” (Rousseau 1968, 72).<sup>6</sup>

I think it follows from this picture of the self that political discourse and its scheme of justification will be well policed to prevent the contamination of the political sphere by private interests. Thus, to fill out the picture of Rousseauian democracy, I will combine Rousseau’s sharp distinction between subject and citizen with a stringent and narrow reading of the requirements of Rawls’s idea of public reason.<sup>7</sup> The narrow reading says that the aim of political discourse should either be to always offer public reasons (reasons that others could, in principle, accept) or, at least, to always aim at make one’s political reasons public. For example, Rawls says that US Supreme Court justices have an obligation to couch their political language in a suitably public form, as do public officials and politicians. Citizens need not abide by such stringent requirements but, nonetheless, they ought to, when deciding whom to vote for. In other words, what is forbidden on this account is to make appeals to private interests, and more specifically, to sectarian beliefs, faiths, and convictions. The realm of the private is thus cut-off from the public, securing a kind of political purity for the public sphere.

The point I want to make about a Rousseauian democracy is that while a right to privacy is not contradicted by it, there is certainly a devaluation of the worth of privacy, at least as far as the underlying democratic theory is concerned. It may be an overreach to say that the private sphere is regarded as a regrettable feature of our lives that tempts us away from the “noble deeds” of the fully political life, but I would argue that this implication is never from the surface.<sup>8</sup> If privacy is not valued, then the argument for a strong right protecting the private sphere will be, correspondingly, weak. This is not to say that people would not want their privacy protected, but rather to say that the political argument for a right to privacy, from the Rousseauian democratic viewpoint, will lack political urgency. There is nothing that makes privacy matter as *political* value. It detracts from, rather than contributes to, a thriving democratic polity.

Both the aggregative and the Rousseauian versions of democratic theory, loosely sketched as they are, point to two areas where the urgency for a right to privacy gets lost—either there is a very sharp division between the public and private self, in the Rousseauian case, or a minimal division, as in the aggregative case. Further, there is either a stringent public reason requirement, in the Rousseauian case, or a very loose public reason requirement, in the aggregative case. My suggestion here is that a theory of democracy that better integrated the private and public self and that better integrated the

6 It would be misleading, of course, to attribute such a stark contrast between the public and private self to every republican theory of democracy. Exactly how each republican account calibrates the relationship between these selves will differ. My purpose, however, is to highlight a common feature of republican thought that is most blatant in Rousseau, namely the privileging of the public political self over the private self. It is this feature I am picking out and using, as a point of emphasis, to make what I take to be an important distinction between Rousseauian and full deliberative democracy. For a fuller, and a much more subtle, account of some republican views see Kant (1991); Arendt (1998; 2006); Pettit (1999; 2013).

7 See Rawls (1996; 1999).

8 Indeed, I think this view is very much on the surface in, for example, Hannah Arendt’s discussion of the public and private realm (Arendt 1998, 22–78).

role of public and private justifications would, as a consequence, place much more value on privacy and subsequently provide a much stronger *democratic argument* for the right to privacy.

### ***Full deliberative democracy***

The third democratic theory is full deliberative democracy and which I argue fully integrates the right to privacy. Here the emphasis is on citizens' capacities for genuine and meaningful political participation alongside institutional structures that support and provide the means for citizens to be both political equals and maximally free to pursue their own conceptions of the good. There are a variety of democratic theories that more or less fit this description but, for my purposes, what matters is that they all share some essential differences with the previous accounts of democracy, and that these differences make a space for an unambiguous commitment to the right to privacy. In keeping with the earlier discussion, I argue that it is full deliberative democracy's integrated conception of the private self and public self and the integrated role of private and public justifications that account for this commitment. I will set out three closely related arguments to support this claim.<sup>9</sup>

First, full deliberative democracy sees that freedom and equality, its foundational values, presuppose a capacity for exercising choice, not only in expressing private preferences, but also in public deliberation, on the political stage. The capacity for autonomy can be developed only by attending to, and nurturing, a self who understands its freedom as a form of self-mastery. One has autonomy, in some degree, only to the extent to which one is able to make choices and, essentially, to have control over both the choices one makes for the satisfaction of one's private preferences and the choices and arguments one makes as a citizen in the public square. Thus, not having control over some aspect of one's life is a diminishment of one's capacity for autonomous choice.

From the viewpoint of full deliberative democracy, autonomy is not a capacity that can be switched on and off and so it makes no sense to think of the public self as capable of autonomous choice and deliberative action, and the private self as heteronomous, or be indifferent to the capacities of the private self for autonomous choice. Advocates of full deliberative democracy are thus concerned with how citizens acquire autonomy in all aspects of their lives, since the fully participating citizen emerges from, and is integrated with, the private subject. The importance of control, self-rule, authorship of one's own life, private and public, is therefore central to full deliberative democracy.

There are numerous ways control can be lost, some voluntary and others forced. The degree of a person's autonomy naturally ebbs and flows. Maximising citizens' autonomy is an aim of full deliberative democracy. The more control a person has over all aspects of her life the better things are, compatible, of course, with similar degrees of control that others enjoy. FDD thus wants citizens, in all aspects of their lives, to have maximal control and that structures and incentives exist in society for the capacity for autonomy to develop.

It is a short step to the conclusion that a right to privacy, which just is having control over the information others know about oneself, is integral to the project of maximising autonomy. Steve Matthews, who has developed a defence of the right to privacy based on the claim to autonomy, writes that

...exercising one's demand for privacy is easily assimilated to the idea of exercising one's autonomy with respect to the regulation, so to speak, of the self boundary. If this aspect of autonomy is the (exercisable) capacity to control access to one's informational or physical self, then compromises to it will involve a disturbance to one's capacity to author one's life as one sees fit (Matthews 2008, 146).

<sup>9</sup> No one instance of a theory of deliberative democracy conforms exactly to the features I attribute to full deliberative democracy. I am not, as it were, picking out an existent account, but rather drawing out and emphasising features that are present in a number of different accounts. Here I will say that that Rawls's notion of wide reflective equilibrium, as I argue, is essential to FDD and picks out what I take to be an essential aspect of an acceptable theory of deliberative democracy. On the other hand, Rawls has, for example, an anaemic account of the public sphere and I would want Rawls's approach to be supplemented by the work of other philosophers of deliberative democracy. But, once again, my aim here is not to lay out of theory of deliberative democracy, but to interrogate the intersection of democratic theory and privacy.

My argument is that the right to privacy is as essential to being an autonomous agent as other liberty rights, such as freedom of movement, free expression, and personal property ownership. I can no more be said to be free in any robust, positive sense, if I am restricted in my movements, in what I may say, and, I argue, in what others know about me. Precisely why this is so will become evident in the second argument below.

Second, one strong theme in arguments in support of the value of privacy is that by concealing information about oneself from others, one is able to curate how one presents to the world and, more specifically, privacy enables one to “create and maintain different sorts of relationships with different people”, as James Rachels persuasively argues. He goes on to say,

... this has to do with the way that a crucial part of our lives—our relations with other people—is organized, and as such its importance to us can hardly be exaggerated. Thus we have good reason to object to anything that interferes with these relationships and makes it difficult or impossible for us to maintain them in the way we want to. Conversely, because of our ability to control who has access to us, and who knows what about us, allows us to maintain the variety of relationships with other people that we want to have, it is, I think, one of the most important reasons why we value privacy (Rachels 1975, 329).

Thomas Nagel takes up a similar view, arguing that privacy functions to “keep disruptive material out of the public” arena and protects “private life from the crippling effects of the external gaze” (Nagel 1998). He makes an analogy with Rawlsian political liberalism where there is a “shared outer space” of common, public discourse and a diverse private inner space. It is only because a diversity of private concerns is allowed to flourish and remain concealed from others that a smoothly functioning social space is obtainable.

Here I will not defend Rachels’s and Nagel’s argument for the value and importance of privacy. Instead, I want to take their approach and turn it to a political purpose. Taking this approach, not only does privacy have value in allowing us to successfully form intimate as well as other personal and social relations, it also allows us to form or to curate our political, democratic selves. Who we are as fellow citizens, political equals, and co-deliberators are as much a construction of the self as is any other self we fashion. And, in the same way we conceal or reveal information about ourselves to facilitate and make possible our personal and social relations, we likewise conceal and reveal information to construct our political selves. The ideal of full deliberative democracy is that citizens encounter one another as political equals and have respect for each other. However, equality and respect are, in an important sense, as artificial as any other attributes of the selves we present in different contexts. We curate our political selves as much as we curate the selves that love intimates, work with colleagues, and so on. What matters in the deliberative space of political encounters is the recognition of the other as a political equal and respect for others’ opinions. It is not difficult to imagine, and there are plenty of examples to testify, how personal information can disrupt and undermine the presentation of one’s political self. A right to privacy is therefore essential to the vision of FDD, since it enables the existence of a distinct political self. The right to conceal information about oneself makes genuine democratic citizenship possible. We are therefore free to be citizens only in so far as we are also free to fashion our political selves, and this freedom rests on a robust right to privacy.

In contrast to Rousseauian democracy, there is not a sharp division between the private and the public self. The public, political self is indeed distinct from the many other selves we construct, but it emerges from, and is dependent on, precisely the same ability to curate different selves. Indeed, one could say that the political self is a consequence of the fact that we have the capacity to be different people in different contexts. The political self is thus one among many selves and not the best or only real expression of our humanity, as Rousseauian democracy would have it. In contrast to aggregative democracy, the political self is not an inauthentic manipulator, a false self, seeking its own advantage in the guise of the fake language of public reason. Instead, full deliberative democracy gives real substance to the political self.

Third, FDD is committed to wide conception of public reason. We saw earlier that Rousseauian democracy invoked a strict or narrow conception of public reason that sharply separated political

justifications from private reasons. Rawls's initial narrow characterisation of public reason was criticised largely because, as evidenced by numerous struggles against oppression, it is sometimes only possible to articulate one's struggle in the language of private experience, at least in the beginning. It is often the personal experience of oppression, as expressed by its victims, that first shifts the views of others in society and it is wrong to exclude these experiences from political discourse. The role of the church in America's civil rights movement in articulating the struggle against racism is an example of relying on a political discourse that cannot meet the strict requirements of Rawlsian publicity. This is because non-believers cannot be expected to take the church's reasons as their own. However, even if limited in justificatory scope, such political discourse gives at least initial traction to the concerns of those the church represented. Rawls says that private rather than public justifications constitute legitimate political reasons on the "proviso" that the aim of all political discourse is to ultimately render these reasons in the form of fully public reasons that all citizens could, at least in principle, accept (or not reject).<sup>10</sup>

The wide conception of public reason therefore takes seriously the role of the private sphere as politically significant and as a source of genuine political reasons, even if these are preliminary, awaiting their fully public justification. In contrast to Rousseauian democracy, full deliberative democracy values private reasons and values the sphere of the private. The political value of privacy is acknowledged and therefore the right to privacy is not an alien demand, as it is in Rousseauian democracy. Additionally, in contrast to aggregative democracy, the role of public reason is given its full significance.

These three arguments, for the role of autonomy in political deliberation, for the view of the political self as a construction, and for the wide view of political justification, support my claim that full deliberative democracy can offer a *democratic argument* for the right to privacy. The alternative views of aggregative democracy and Rousseauian democracy cannot offer such an argument, and so if one values privacy and expects this value to be reflected in a satisfactory democratic theory, then one is committed to some version of full deliberative democracy that can make the argument for a robust right to privacy. Alternatively, if one is already committed to full deliberative democracy, then one is thereby also committed to a robust right to privacy.

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<sup>10</sup> See Rawls (1999).



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