

The Political Privacy Dilemma: Private Lives and Public Office

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ABSTRACT *Should political leaders have a right to privacy? Incursions by new and traditional media into the private lives of political leaders are commonplace. Are such incursions ethically justifiable? Prima facie, the question of 'political privacy' seems to involve a conflict between a politician's self-interest in retaining a protected private realm and citizens' public interest in having access to information about their representative's private life. Indeed, this is the structure that the debate has typically assumed. I challenge this orthodox view by demonstrating that there is a public interest in political privacy grounded in the relationship between privacy and political judgement. I argue that the political privacy debate should be recast to recognise this conflict between two different strands of the public interest. This conflict presents a dilemma for democratic theory: in providing voters with private information relevant to the evaluation of political leaders' suitability for office and performance within it, we threaten to undermine the conditions necessary to attract candidates of judgement and for political leaders to judge well once in office.*

1. Introduction

Consider the following propositions:

- (1) Civic Function: To perform their civic functions of voting and political account holding, citizens should be granted access to information concerning their politicians that is relevant to these tasks.
- (2) Political Decision-Making: The conditions of political office should be structured both to facilitate capable aspirants to enter office and to support responsible decision-making by political officeholders once in office.

This article proposes that these two propositions concerning representative democracy form an inconsistent dyad – both cannot be realised at the same time. I argue that the source of their inconsistency is the 'problem of political privacy'.

From Joe Biden's health,¹ Donald Trump's marriage,² and Bill Clinton's extra-marital affairs,³ to the size of Boris Johnson's family,⁴ David Cameron's experimentation with drugs while at school,⁵ and the late-night drunken escapades of Tony Blair's son,⁶ the private and family lives of our political leaders have been subject to intense scrutiny in recent decades. The public appears to have a voracious appetite for such reportage. Political privacy is a perennial problem of representative democracy, as it cuts to the heart of the relationship between citizen and representative, yet it remains surprisingly undertheorised.⁷

In an era in which 'transparency' is widely viewed as crucial to the protection of the public good⁸ – the more information that is available to citizens the better⁹ – it seems

natural to assume that greater transparency about politicians' private affairs would equally be in the public interest. In addition to transparency about politicians' activities in the *political* sphere, should we not also seek transparency about their activities in the *private* sphere?

Not only are politicians sharing more about their private lives than two decades ago via social media, websites, and blogs, the advent of smartphones and citizen journalism has made the acquisition and dissemination of information about their private lives easier than ever before. As a result, deep incursions into their private lives can be made against their will. However, 'can' does not imply 'ought', so the question remains: should their private lives be subject to such scrutiny?

The prevailing approach in law and within the philosophical literature treats this question as a matter of balancing the politician's interest in privacy with the public's interest in transparency.¹⁰ I challenge the prevailing view by establishing that there is a vital public interest in our politicians being afforded a robust right to privacy. My argument supplements moral arguments for political privacy arising from fundamental human interests. My central claim is that there are reasons which weigh heavily in favour of political privacy that do not emanate from a politician's moral right to privacy *qua* person. Instead, they arise from democratic reason. The democratic justification of political privacy locates the ground of a politician's right to privacy in its functional value for good leadership. Functional value is understood in terms of conduciveness to the effective execution of the responsibilities of office. This consequentialist approach to justifying the right to privacy should be distinguished from a status-based approach. The democratic approach to justifying politicians being afforded a right to privacy is grounded not in their status as moral agents or in any feature of their personhood. Rather, it is justified on a consequentialist basis. On this approach, political leaders should be afforded a right to privacy on account of the benefits that are likely to accrue – not for themselves – but for the public. By contrast, status-based accounts seek to justify rights on the basis that the ascription of a right is fitting on account of some attribute of the purported right-holder (e.g. their dignity, autonomy, or personhood).¹¹ The status-based approach does not seek to justify rights on the consequentialist basis that rights promote desirable outcomes, but on the deontological basis that they are owed to the right-holder irrespective of consequences.

I propose that there is *pro tanto* democratic reason for politicians to enjoy a robust right to privacy. Political privacy promotes representative democracy by supporting:

- (1) the quality of political decision-makers; and
- (2) the quality of political decision-making.

Given the importance of good political decision-making, there is reason for politicians to gain, rather than to lose, protection for their right to privacy upon entering the political fold, even prior to their being elected to office. This conclusion runs counter both to prevailing practice and to received philosophical orthodoxy on political privacy.

It is important to clarify the scope of my argument in three respects. First, I seek to establish the existence of certain kinds of *pro tanto* reasons in favour of political privacy. These reasons may be defeated by competing reasons against political privacy. However, they should be afforded normative weight in the debate, and, if competing reasons do not trump or outweigh them, they should be followed.

Second, I do not attempt to formulate a comprehensive account of reasons in favour of political privacy. I am concerned only with democratic reasons, that is, reasons that arise from the ideals that underpin representative democracy. For example, I set aside moral arguments that tell in favour of political privacy arising from a politician's human rights.

Third, my argument concerns the structure of incentives that the loss or substantial erosion of the right to privacy creates for political leaders. In the design of our political system, we should avoid creating conditions that incentivise undesirable outcomes (e.g. the selection of less than capable candidates or the imposition of conditions on selected candidates that are inhospitable to responsible decision-making). My overarching thesis is that the loss of privacy creates structures of incentives that threaten the quality of political judgement. Framed in terms of incentives, the argument does not depend on the empirics (i.e. it does not depend on whether current and aspirant political officeholders actually act on the incentives that they face). Rather, it concerns both the circumstances that they face in office and the circumstances that they anticipate as they aspire to office which militate against our political leaders performing judgement-based political decision-making well.

The contours and normative weight of a politician's right to privacy are determined not simply by the outcome of a conflict between their private interest and the public interest. Rather, they depend also on the outcome of a conflict between different aspects of the public interest. In short, there is a public interest in political privacy, grounded in the requirements of representative democracy. This article does not attempt to draw the precise limits of political privacy. Rather, it refocuses the debate to illuminate democratic concerns that have hitherto been overlooked.

Democratic conceptions of privacy, as proposed most notably by Annabel Lever,¹² have established the importance of privacy for democratic citizens to discharge their civic duties.¹³ However, the democratic approach has received comparatively little attention with respect to the privacy of political officeholders.¹⁴ In this article, I take up this task and argue that, while citizens require privacy to discharge their civic duties, citizens also require that their political leaders be afforded a right to privacy to facilitate responsible governing. Serious incursions into the private lives of our politicians threaten both to impact negatively on the quality of people who enter political life and to impede those who enter political life from discharging their responsibilities of office.

In Section 3, I describe the orthodox view regarding the problem of political privacy. In contrast to that view, in Section 4, I develop a public interest argument for political privacy. In Section 5, I describe the privacy dilemma to which the arguments of Sections 3 and 4 give rise. Before I begin the substantive argument, however, I clarify key terms in the debate.

2. Clarification of Key Terms

My concern is with the *moral* – as opposed to the legal – right to privacy. This moral right may be reflected in a legally enforceable right, but the two are distinct. Those who breach this moral right are presumptively appropriate subjects of moral criticism but not necessarily of legal sanction. The core of the moral right to privacy is *control of access to information* of certain kinds.¹⁵ A person enjoys the right to privacy when they control the information that is gathered, stored, and disseminated about them by public or private organisations, or, indeed, by individuals. The paradigmatic examples of private

information concern one's health, one's sexual activity, one's family life, and one's religious beliefs and practices. The interest that grounds the right to privacy is the importance of possessing some degree of control over how we present ourselves to others,¹⁶ including some control over whether we present ourselves to others at all. Privacy is not the mere absence of information from the minds of others. A person does not enjoy the right to privacy over an aspect of their life if third parties are entitled to access information about that aspect of the person's life, even if those third parties never in fact exercise their entitlement.

This article concerns the right to privacy of politicians in representative democracies.¹⁷ I take political leaders as my central case. Political leaders are elected senior political officeholders whose roles are characterised by wide discretionary power. Examples of such politicians include heads of government or government ministers. My use of the term incorporates both existing holders of high political office as well as candidates for such offices. This contrasts with politicians who enjoy little discretionary power, such as backbenchers in a whip system who are obliged to vote in accordance with their party.

I focus on political leaders because, *prima facie*, they are the strongest candidates to forfeit their right to privacy on account of their having the most power over us. If a persuasive case cannot be made for significant incursions into the private lives of politicians who wield the most power, then it is unlikely that such a case could be made for politicians generally. However, I argue, that, paradoxically, given both the importance of privacy to political judgement and the central role of political judgement in political leadership, there are powerful countervailing reasons for political leaders to be afforded strong protections of their privacy.

'Public interest' is used in a restricted democratic sense to denote the citizenry's common interest in the health of the representative democratic system. Citizens of a representative democracy have a common interest in sustaining their representative democratic system and in better approximating representative democratic ideals, including the ideal of capable representatives being entrusted to take decisions responsibly on behalf of those they represent. This is not intended as a complete account of the public interest. Rather, it identifies the dimensions of the public interest relevant to the present context only.

I turn now to Section 3 in which I delineate the orthodox view, according to which, demands for political privacy are understood as normatively weak, self-interested assertions on the part of politicians.

3. The Orthodox View

Politicians are widely regarded as the paradigm public figure whose right to privacy is both morally (and legally) weak. This means that, when this right is balanced against other competing concerns such as 'freedom of expression' or the 'public interest', it is more easily defeated and, consequently, incursions into the right justified. The political privacy debate is typically structured as a balance between the public interest in having access to information about their politicians' private lives and politicians' private interest in controlling who can access that information. The greater the power of the political officeholder, the greater the public interest in knowing about their private life. So, on the orthodox view, the higher a politician climbs the political ladder, the weaker their claims to

privacy. The orthodox view is supported by prevailing public opinion, judicial opinion, and philosophical scholarship.

Public opinion seems to support *some* degree of media intrusion into the private lives of politicians. In the UK, a survey conducted in 2006 by the Committee on Standards in Public Life into public attitudes towards conduct in public life found that only 26% of respondents thought that MPs and government ministers 'should have the right to keep their private lives private';¹⁸ 73% of respondents thought that MPs and government ministers should accept at least a certain level of media interest in their private lives; and 24% of respondents thought that MPs and government ministers should accept that the media examine *every* aspect of their private lives because 'it comes with the job'.¹⁹

Judicial opinion, too, seems to support press intrusion into politicians' private lives. In her opinion in the landmark House of Lords privacy case, *Campbell v MGN Ltd*, Baroness Hale stated that:

The free exchange of information and ideas on matters relevant to the organisation of the economic, social and political life of the country is crucial to any democracy. Without this, it can scarcely be called a democracy at all. This includes revealing information about public figures, especially those in elective office, which would otherwise be private but is relevant to their participation in public life.²⁰

On this view, the health of a democracy requires that voters have access to information concerning the private lives of their politicians relevant to those politicians' participation in public life. Relatedly, in a Court of Appeal privacy case brought on behalf of Boris Johnson's daughter against a tabloid newspaper, Lord Neuberger MR concluded that the secret adulterous relationship that resulted in the birth of the claimant 'was a public interest matter which the electorate was entitled to know when considering [Johnson's] fitness for high political office'.²¹

Political philosophers who have considered the issue have also been hostile to political privacy. Dennis F. Thompson, the leading contemporary writer on ethics in public office, maintains that: 'The private lives of public officials deserve protection because the privacy of all citizens has value. However, because officials must be held accountable in a democracy (in part to safeguard the privacy of others), officials should not expect to enjoy the same protection as ordinary citizens do'.²² This frames the question of political privacy as a conflict between a politician's right to privacy *qua* citizen and the demands of public life, including the public interest in disclosure about the politician's private life.

Having laid out the orthodox view and located it within public opinion, judicial opinion, and political thought, I develop now a contrasting public interest argument according to which there is democratic reason to afford politicians strong protection for their right to privacy.

4. The Public Interest in Political Privacy

High political offices are primarily decision-making roles. Political leaders do not fight in war, but they decide whether war should be fought; political leaders do not deliver social services, but they decide which social services the state should provide; and political leaders do not teach in classrooms, but they decide what should be taught. Bad political

decisions ruin lives. When we trust politicians, first and foremost, we trust their decision-making.

The decisions that predominate in political leadership are judgement-based. Even if conduct in political office is governed by legislation (e.g. conflict of interest legislation, lobbying legislation) or codes of ethics (e.g. the UK's Seven Principles of Public Life²³), these prescriptions underdetermine what should be done. Political leadership involves decision-making in the absence of comprehensive, determinate, and readily applicable rules to guide action.²⁴

Given the significance of their decisions and the judgement-based character of those decisions, it is important that our political leaders are competent decision-makers and enjoy the conditions necessary to exercise their judgement well. They should be afforded conditions in which they can deliberate and take decisions unimpeded (or at least minimally impeded) by influences that may compromise their capacity for judgement. I argue that the loss of political privacy creates conditions that are hostile both to political recruitment and to political decision-making. Both concerns arise from the relationship between privacy and political judgement.

4.1. *Privacy and Political Recruitment*

Incursions into political privacy may erode the quality of political judgement by establishing a structure of incentives that negatively impacts political recruitment in two respects: it disincentivises people of good judgement from entering politics and it shapes the formation of political aspirants in ways that militate against the development of good political judgement.

4.1.1 *Privacy and political aspirants*

The prospect of losing, or enduring the significant erosion of, their right to privacy may have a perverse effect on the number and calibre of people willing to enter political life. It may deter capable and talented people from running for office. Political commentator Iain Dale articulates this worry well:

Most of them are not famous until they are in their 40s and who in their 40s has done nothing that they wouldn't mind appearing in newspapers? That puts a lot of people [off] going ... into political and public life. Why put your family through that agony? We are missing out [on a] whole range of people – we'll never have another Churchill or Lloyd George – imagine them today. We are getting little personalities with little experience of life ...²⁵

The effect of curtailing political leaders' right to privacy may be to narrow and dilute the pool of capable people willing to enter politics. Few people who have led active and varied lives have done so without error. Embarrassing mistakes and failures are an inevitable feature of a mature person's life history. The possibility of one's private failures being laid bare to all provides a powerful disincentive to enter political life. The loss of one's privacy and the associated loss of one's family's privacy steeply increases the cost of entering political office and may dissuade capable and otherwise willing candidates from entering the fray.

Moreover, this disincentive may stifle existing efforts to remove barriers to political participation among traditionally excluded groups. Social norms around private conduct

are more demanding of some groups than others. For example, social norms around care-giving and sexual conduct remain more demanding on women than men. Women are still expected to shoulder a disproportionate share of care-giving responsibilities.²⁶ Similarly, men who engage in frequent fleeting sexual encounters are often admired while women who behave similarly are shamed (the so-called 'sexual double standard'²⁷). This suggests that the loss of privacy would be disproportionately burdensome (and, as a result, disproportionately disincentivising) on certain groups than others, including on women over men. So, the political privacy debate is not disconnected from debates about justice in access to political office.

4.1.2 *Privacy and the formation of political aspirants*

The loss of privacy not only threatens to narrow the pool of politically talented candidates willing to enter public life; it also threatens to shape the formation of political aspirants. The prospect of one's private life being exposed may negatively impact the development of those who aspire to run for office one day.

While not all political leaders aspire to high political office from their youth, many appear to harbour political ambitions from at least early adulthood. Boris Johnson's childhood ambition was to be 'World King'.²⁸ As teenagers, fellow British prime ministers John Major, David Cameron, and Liz Truss were all active in party politics. Theresa May held ambitions to be prime minister from her undergraduate days (at the time, she hoped to be Britain's first woman prime minister).²⁹ New Zealand prime minister Jacinda Ardern joined the Labour Party when she was 17.³⁰ Both of the last two Irish prime ministers, Leo Varadkar³¹ and Michéal Martin,³² were active members of their respective party branches while at university. So, recent political history is replete with examples of heads of liberal democratic governments whose political ambitions can be traced back to their youth.

The anticipation among political aspirants of the loss of privacy upon entering political life incentivises them to direct their formative decisions to meet the projected demands of political office.³³ Expectation of such scrutiny discourages political aspirants from experimenting with ideas and ways of life, of garnering experience that will be relevant to their capacity to perform well in the role once elected. The prospect of intense scrutiny of their private lives incentivises political aspirants to lead lives that could be laid bare without embarrassment. They are encouraged to lead sheltered, cautious lives – not to put a foot wrong. The benefits of trying and failing, of trying again and failing better, and formulating one's views in light of all that are sacrificed to pre-emptively insulate oneself from the possibility of future scandal or public disapproval.

Moreover, experience is necessary to develop an understanding of a range of interests and perspectives (including those of political opponent). The greater number of interests that a deliberator can appreciate by virtue of their own direct experience the better.³⁴ Without such experience, one must rely more heavily on the power of one's imagination to place oneself in the shoes of those whose interests are affected by one's decisions. Experiential learning (at the 'school of hard knocks') is crucial for the development of moral and political judgement.³⁵ Our ability to judge what is right depends on our life experience, not simply on our mastery of a mathematical calculation or proficiency in the application of moral principles. Such broad experience will prove elusive to those who judiciously avoid experimentation in different ways of living for fear of embarrassing error.

In addition to militating against experiments in living, the loss of political privacy discourages experiments in thought. If political leaders are denied a right to privacy, aspirant politicians may be discouraged from voicing opinions that could be leveraged against them later when they enter public life. Inviting scrutiny from one's peers about one's political beliefs is crucial to the development of one's political outlook. Sheltering one's beliefs from such examination risks weaknesses in one's views never becoming apparent, alternatives never being contemplated, and opinions never reaching the level of considered convictions.

So, in addition to an erosion of the quality of political judgement through a contraction of the pool of political aspirants, the loss of privacy may erode political judgement by encouraging political aspirants to pursue formative paths that are ill-suited to the development of political judgement.

4.2. *The Loss of Privacy as a Threat to Political Decision-Making*

Leaving aside the two respects in which the loss of political privacy threatens political recruitment, such a loss also threatens the political judgement of existing officeholders.

4.2.1 *Privacy and grounding*

We manage our relationships with others partly according to how much information about ourselves we are willing to share with them. Typically, we disclose to our intimates information about ourselves that we would not disclose to mere acquaintances. If the regulation of our relationships with others is partly a matter of whether we can control the information that they can know about us, the absence of such control entails a diminished capacity to regulate the relative intimacy of our relationships. Good marriages, partnerships, and friendships can enhance, and may even be constitutive of, our well-being,³⁶ including for those in the public eye.

Privacy provides the background without which it is difficult to secure some of our most important relational goods such as love and friendship. Indeed, some have argued that privacy is not simply an efficient means of advancing these goods; it is necessary for their very being.³⁷ On this view, privacy is a *sine qua non* for the relationships that give our lives meaning and value. My argument does not rely on this necessity claim, however. It suffices for present purposes that privacy is *facilitative* of such relations such that, in privacy's absence, it is difficult to access these relational goods. Privacy grants us the freedom to determine our public face and to maintain different degrees of intimacy with different people. We may present an ambitious face to our employer, a playful one to our friends, and a responsible one to our children. Our ability to sustain these different personas in a convincing way depends heavily on our ability to regulate what others know about us.

In addition to being conducive to, or even constitutive of, well-being, such relationships provide distinctive benefits to those in political life. For example, fulfilling intimate relationships can help a political leader to remain grounded, to retain psychic balance amidst the potentially overwhelming pressures and unrelenting nature of their office. Such relationships can also help to curb the aggrandising effects of holding high political office. They can help those in political office to avoid what Gerald Kaufman calls 'ministerialitis': 'a swelling of the head ... a preoccupation and satisfaction with holding ministerial office to the exclusion of almost all other considerations'.³⁸ Family and friendship, especially with those outside the political bubble, can help politicians to remain connected to the

mundane concerns of everyday life, despite the temptations to lose touch with the ordinary in the midst of the esteem and respect attached to their office. Yet it is precisely those key relationships that the loss of privacy threatens to undermine.

Moreover, political office – especially in an age of 24-h news cycles, citizen journalism, and endless social media feeds – can be overwhelming and all-encompassing. It can be difficult for politicians to escape the pressures of their office. The private sphere can provide a refuge from the political milieu, a space in which one can shed one's public persona, distract oneself from the pressures of political life, think and act unconstrained by the shackles of public accountability and expectation, and restore one's energy and enthusiasm for political office. In short, the private sphere can provide a respite from the rigours of the political sphere. This refuge is lost with diminished protection for one's privacy.

4.2.2 *Privacy and freedom of thought*

In addition to its role in creating conditions conducive to relations of intimacy and providing a reprieve from the political sphere, privacy is a facilitating, or perhaps even an enabling, condition for epistemic virtues, notably creativity.³⁹ Publicity can encourage homogeneity in people's opinions and discourage the expression of opinions for which one will be ridiculed or which will be socially or professionally damaging. Consequently, the loss of privacy may stifle political imagination. That is, the loss of privacy in deliberations about political issues may incentivise a kind of self-censorship that discourages innovative thought.⁴⁰ The threat of social disapproval, rebuke, or ridicule for ideas before they are properly formed or prior to their being ready for public consumption would disincentivise political leaders from engaging in risky, imaginative, or unconventional thought. The loss of privacy may encourage conservatism in political thinking.

To avoid the costs of holding unpopular views, individuals are incentivised to drift towards less contentious views. In attempting to overcome the difficulty of apparent hypocrisy as one's views evolve, one may even succumb to self-deception. As Thomas Nagel notes:

If everything has to be avowed, what does not fit the acceptable public persona will tend to be internally denied ... The more we are subjected to public inspection and asked to expose our inner lives, the more the resources available to us in leading those lives will be constrained by the collective norms of the common milieu. Or else we will partially protect our privacy by lying; but if this, too, becomes a social norm, it is likely to create people who also lie to themselves, since everyone will have been lying to themselves since childhood.⁴¹

The more we are forced to shape our private selves to cohere with our public persona, the more our private lives are constrained by prevailing social norms or the more we need to lie to sustain the perception of coherence between public and private. The freedom to remain reticent allows one to live with, and reflect upon, one's controversial views without experiencing the pressure of social condemnation or 'cancellation' upon these views being made public. If one were not entitled to reject attempted infringements of one's privacy on the basis that the information in question was 'private', one would be incentivised into hypocrisy and lying to escape public attack and associated political consequences.

The publication of private indiscretion feeds into a shame culture in which the media 'expose' and 'unmask' political leaders. The fear of being exposed for a supposed private indiscretion, or the worry of being wrongly accused of private indiscretion, incentivises

political leaders to devote time, energy, and resources to image management of their private lives. This transaction cost constitutes a distraction from political concerns⁴² and creates perverse incentives towards hypocrisy.⁴³ Political judgement requires the freedom to withdraw from the demands of public accountability for one's views or behaviour so that one can reflect unencumbered by the pressures of self-presentation and shielded from political repercussions.

4.2.3 *Privacy and self-appraisal*

The loss of privacy also increases the difficulty for political leaders of recognising and learning from their mistakes. The experience of failure is of little value if we do not recognise failure as failure, if we do not care about having failed, and if we do not resolve to take steps to avoid such failure in future.⁴⁴ If a political leader loses the freedom to reflect privately on mistakes with colleagues, family members, or in a personal diary without the threat of disclosure, their opportunity to engage in an honest assessment of their conduct is severely limited. They will be encouraged to present an interpretation of their actions and decisions that minimises political damage. This might involve shifting the blame to others, downplaying the extent of their involvement, attributing the error to bad luck, or denying that an error was made at all. If political leaders must always be amenable to the demand to account for their thoughts and conduct, they may come to believe their own spin, by cognitive dissonance or otherwise. If learning from past mistakes is likely to improve future decision-making, then undermining the conditions by which political leaders can learn from their mistakes through honest self-appraisal further illustrates how the loss of privacy threatens to compromise political judgement.

So, the loss of privacy may undermine political judgement through its negative impact on relationships, the sincerity of policy deliberation, and the opportunity to reflect on and learn from misjudgements.

From the close positive relation between political privacy and the quality of political judgement, there are public interest reasons in favour of political privacy that arise from both political recruitment and political decision-making concerns. In the next section, I explore what follows from these public interest arguments for the structure of the political privacy debate.

5. **The Political Privacy Dilemma**

The last section established a public interest in political privacy arising from a concern for representative democracy. The formation of political aspirants, the composition of the political talent pool, and the promotion of conditions that are conducive to responsible political judgement by elected officials all strengthen the case for political privacy. Conversely, there is a clear democratic interest in transparency about the private lives of politicians. The purpose of this section is two-fold: to sketch the leading arguments against political privacy and to make the case that, even if these arguments turn out not to be compelling, the rights of voters may require that these arguments be respected in the political process. Coupled with the democratic arguments for political privacy above, this establishes a political privacy dilemma.

The first argument for disclosure is that probity in their private lives is constitutive of political virtue. On this view, part of what it is to be a good public representative is to be

a good person, and a good person not just in the political sphere but in the private sphere too. Citizens are entitled to information relevant to the assessment of whether their elected officials succeed or fail in their role. Consequently, citizens are entitled to information about whether their politicians succeed or fail in their private lives.

In a similar vein, a second argument for transparency about their private lives maintains that politicians have role model obligations associated with their political office. Holders of high political office inform the moral tone of their society. Their conduct has a disproportionate influence in shaping the community's moral norms. On account of this influence, politicians have a duty to provide an example that is worthy of emulation. By extension, the public have a right to verify whether politicians live up to the standards of conduct they are obliged to maintain in their private lives, even if this involves intrusion.

In contrast to the two previous arguments, perhaps one's private conduct is not *constitutive* of political performance but is *predictive* of it. On this view, traits of character extend across different contexts, so a person who lies to their partner is likely to lie to the electorate; a person who cheats at golf is likely to cheat in elections; and a person who abandons their family is likely to abandon their constituents. So, private conduct reveals dispositions that are likely to manifest themselves in political action. On this basis, it is important that citizens can learn about their politicians' private conduct so that they can make an informed judgement about their likely political conduct.

Finally, access to a politician's private life may be necessary to uncover their hypocrisy. If we understand hypocrisy (roughly) as a disparity between one's professed beliefs and one's conduct (i.e. saying one thing and knowingly doing another), then it will be necessary to enquire into their private conduct to establish whether this conduct is consistent with their public pronouncements about private matters. For example, a politician who trades electorally on being a 'family values' candidate should not expect their marital infidelity to be protected by the right to privacy nor should one who espouses 'green values' expect their environmentally irresponsible private behaviour to be protected by the right to privacy. Otherwise, they could benefit from undeserved, electorally valuable, good reputation arising from the false perception that they live in accordance with certain values, so the argument goes.

Each of these four (briefly stated) arguments for transparency is highly contentious. To the first argument, it might be objected that the bounds of a politician's political life are not identical to the bounds of their life, and a politician's private (mis)conduct forms no part of their performance in office. Private probity is not a responsibility of political office any more than it is in any other occupation. To the second argument, one might object that the role model obligations purportedly owed by politicians are a fiction. Even assuming the moral desirability of politicians living in ways that are worthy of emulation by the public, moral desirability falls short of moral obligation. To the third argument, it might be objected that history is replete with examples of politicians who displayed vices in their private life but the contrasting virtues in their political life, so little can be extrapolated from one's private behaviour for one's likely political performance.⁴⁵ Consequently, classically private wrongdoing such as marital infidelity or neglectful parenting does not bear on whether a politician can discharge the responsibilities of office. Finally, one might doubt that hypocrisy is something we should worry about in democratic politics. Hypocrisy can be an important means to protect one's privacy,⁴⁶ and hypocrisy may be an unavoidable, sometimes even a desirable, feature of democratic political life.⁴⁷ In any case, why concern ourselves with a discontinuity between private conduct and publicly professed

convictions if a politician's performance in office constitutes responsible political conduct (e.g. advances the common good or eliminates clear injustice)?

However, the possible limitations of the arguments sketched above must be set within the democratic context in which they are voiced. While it may be false that private probity is a requirement of political leadership, there is at least reasonable disagreement on the matter. Those who hold such a view have a democratic right to information pertinent to the execution of their responsibility as voters.⁴⁸ This is Frederick Schauer's democratic right of voters argument. In a democracy, individual voters have a right to determine both their own voting criteria and whether a candidate satisfies those criteria.⁴⁹ Attempts to settle these questions on a majoritarian basis – where the polity determines what information is relevant to voting – is anti-democratic on account of its placing undue constraint on voter autonomy. The right to vote 'carries with it the accessory right to obtain the information that is relevant to a voter's decision (based on a voter's own conception of the morally permissible criteria that are material to an office)'.⁵⁰ In short, the right to vote implies the right to know.

Schauer's account does impose some moral constraints on the information with which voters may be provided. Specifically, he posits that demands for 'morally inappropriate criteria' should not be accommodated. While he does not develop a full account of how morally inappropriate criteria should be determined, he identifies examples of criteria that it would be morally inappropriate for voters to adduce (e.g. a candidate's sexual orientation or disability). A voter's desire for information relevant to these criteria would not ground a right to such information. Rather than on the basis that such information is 'not relevant' to voters' decision-making, he argues that the wrongfulness of taking morally inappropriate criteria into consideration 'trumps' the democratic right of voters to self-determine the criteria they use in voting.⁵¹ While the permissiveness of Schauer's approach turns on the absent account of what constitutes morally inappropriate criteria, his idea that voters have a democratic right (within certain moral limits) to information relevant to voting criteria that they determine for themselves is an appealing (if incomplete) democratic argument against political privacy.

I take these briefly sketched arguments to be the core of the case against political privacy. The democratic right of voters argument provides a *pro tanto* public interest reason in favour of transparency about politicians' private lives. Conversely, as articulated in detail in Section 4, the importance of privacy for political recruitment and the quality of political decision-making grounds a *pro tanto* public interest reason in favour of political privacy.

This conflict presents a dilemma within democratic theory about whether politicians should be afforded a right to privacy. Specifically, the normative conflict is not simply between liberalism (and its concern for individual rights) and democracy (and its concern to ensure the conditions necessary for a properly functioning state). It is also between different strands of democratic thought. The pursuit of one democratic value – providing voters with the morally appropriate information that they believe necessary to select between candidates and evaluate the performance of officeholders – will threaten the possibility of pursuing another democratic value – providing conditions conducive to capable people entering political life and ensuring that those who do enter politics are afforded the conditions necessary to perform well in office. In providing voters with information favourable to the identification of capable political decision-makers, we deny political decision-makers conditions favourable to political decision-making. Conversely, in

affording political decision-makers conditions favourable to political decision-making, we deny voters information favourable to identifying excellent political decision-makers.

This is not to say that *any* disclosure concerning the private lives of politicians will result in a deterioration in the conditions necessary for political deliberation, but the point at which incursions into the private lives of politicians erode their capacity for decision-making arrives sooner than the point of full disclosure. While a strict inverse relation may not obtain between the extent of a politician's right to privacy and the conduciveness of conditions necessary for political judgement, at least beyond a certain threshold, incursions into the private lives of political leaders limit their ability to exercise their capacity for political judgement. The precise point at which this is reached is likely to be context-dependent.

6. Conclusion

My aim has been two-fold: to establish a heretofore overlooked *pro tanto* democratic reason in favour of political privacy and to demonstrate that this reason creates a dilemma for democratic theory. If these aims have been achieved, the terms of the political privacy debate should shift from the exclusive focus on how a politician's self-interest in privacy pulls against the public's right to know about them to an expanded discussion that considers how different aspects of the public interest lie on different sides of the argument. The conditions for good government and the demands of political accountability seem to pull apart. I leave this dilemma unresolved, as I doubt it can be solved absent salient facts about the given political culture, not least citizens' preference between the two dimensions of democracy that are at stake. Different plausible resolutions of this tension are possible. The problem of political privacy is not reducible to the public's right to information being stifled by politicians' selfish insistence on enforcing their right to privacy. Rather, this debate brings into tension the public's right to know and the public's right to capable government. The requirements of representative democracy straddle both sides of the debate.

Arising from the responsibilities of office, political leaders are widely thought susceptible to justifiable incursions into their private lives. Properly understood, the background conditions necessary for the execution of these responsibilities give us reason to bolster rather than remove the protection afforded to their private lives. Incursions into the right to privacy of political leaders – even if they reveal information salient to the quality of their political judgement – can, at best, establish whether our political leaders *possess* the capacity for judgement. However, the process by which we investigate what capacity for judgement political leaders possess creates conditions averse to this capacity being *exercised*. The necessary conditions for good political judgement can be met only with the guarantee of privacy. By impeding responsible decision-making and creating a barrier to political recruitment, the loss of privacy among political leaders presents a serious obstacle to responsible government.

This establishes a dilemma in a restricted sense – from within the perspective of democratic reasoning. It is important to stress that democratic reasons are only one type of normative reason relevant to this debate. In addition, for example, moral reasons arising from the politician's human right to privacy are relevant, as is the right to privacy of friends, family, and acquaintances who inevitably feature in disclosures about a politician's private life.

A core tenet of representative democracy is that voters are entitled to information necessary to decide between candidates. Such information includes private information. What remains unresolved is the choice between doing that which helps us to identify those of good political judgement and providing the conditions necessary for those of good political judgement to exercise that capacity once in office. This is the political privacy dilemma.

Arising from this dilemma, the right to privacy of political leaders may be grounded not in *their* interests but in *ours*. A question which follows from the foregoing discussion of the protection of private information concerns the voluntary disclosure of private information. The logic of my argument may ground not just a right to political privacy but also a duty of political privacy: a duty of reticence owed by politicians to citizens not to share private information the disclosure of which may impede them in the execution of their political duties or contribute to a political culture characterised by such impediments.⁵² Their right to privacy may not only be robust but also unrelinquishable. This question is for another day. What we have established, however, is that, to enable our political leaders to excel publicly, we have *pro tanto* democratic reason to afford them a robust right to privacy.

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NOTES

1 Scarry, "New Questions."

2 BBC News, "Melania Trump."

3 For a discussion of the Clinton–Lewinsky scandal, see Gutman and Thompson, *Ethics and Politics*, 139–58.

4 Young, "Boris Johnson."

5 While still opposition leader, David Cameron was questioned repeatedly by the press about alleged experimentation with recreational drugs while at secondary school and university. See BBC News, "Cameron May Face More Questions." More recently, historic drug use among leadership candidates garnered considerable attention during the 2019 Conservative Party leadership contest. See Perraudin, "High Tories."

6 *The Guardian*, "Tony Blair's Son Says Sorry."

7 Notable exceptions include Thompson, *Political Ethics*, chap. 5; Thompson, *Restoring Responsibility*, chap. 10; Schauer, "Can Public Figures Have Private Lives?"; Dobel, *Public Integrity*, chap. 9; and Lawlor and Macnish, "Protecting Politicians' Privacy."

- 8 For example, transparency understood as ‘openness’ is one of the Seven Principles of Public Life, by which all public servants in the UK are bound. ‘Openness’ is described as follows: ‘Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.’ See Committee on Standards in Public Life, “Seven Principles of Public Life.”
- 9 Note important criticisms of the transparency movement in O’Neill, “Transparency”; Prat, “More Closely.”
- 10 This is referred to as the ‘standard framework’ in Lawlor and Macnish, “Protecting Politicians’ Privacy,” 87.
- 11 Wenar, “Rights.”
- 12 See, for example, Lever, “Privacy Rights and Democracy”; Lever, *On Privacy*; Lever, *Democratic Conception of Privacy*.
- 13 See also Bogue’s recent work, “Democratic Privacy.”
- 14 Thompson, *Political Ethics*, and Schauer, “Can Public Figures Have Private Lives?” deploy democratic arguments against political privacy. Lawlor and Macnish, “Protecting Politicians’ Privacy,” offers a democratic argument for political privacy based on vulnerability to blackmail to which politicians may be susceptible if their private lives were subject to ongoing indiscriminate surveillance by the media. However, my concern is not with the total *subversion* of political judgement that follows blackmail by nefarious journalists and editors but with the more subtle and pernicious *erosion* of political judgement that follows from politicians’ loss of the expectation of privacy.
- 15 Privacy is sometimes thought to admit three different subjects: informational privacy, decisional privacy, and physical privacy (e.g. Rössler, *Value of Privacy*, 9). It is questionable whether these forms of privacy really are analytically distinct. I follow James Griffin in maintaining that each is reducible to informational privacy. See Griffin, *On Human Rights*, 235–8. Even if they are not reducible in this way, informational privacy is the typical form of privacy breached in intrusions into politicians’ private lives.
- 16 Marmor, “What is the Right to Privacy?”
- 17 The argument may also extend to senior civil servants and elected judges, for example.
- 18 Committee on Standards in Public Life, “Survey of Attitudes 2006,” 51.
- 19 *Ibid.*, 51. In the Committee’s 2010 survey, the percentage of respondents who viewed ‘setting a good example in their private lives’ as one of the three most important criteria by which to evaluate MPs’ conduct had doubled from (an admittedly modest base of) 6% in the 2006 and 2008 surveys to 12%. See Committee on Standards in Public Life, “Survey of Attitudes 2010,” 21.
- 20 *Campbell v MGN Ltd* [2004] UKHL 22, para 148.
- 21 *AAA (By Her Litigation Friend BBB) v Associated Newspapers Limited* [2013] EWCA Civ 544, para 55.
- 22 Thompson, *Political Ethics*, 134.
- 23 Committee on Standards in Public Life, “Seven Principles of Public Life.”
- 24 On the role of judgement in political decision-making, see, for example, Berlin, “On Political Judgement”; Philp, “What is to Be Done?”; Steinberger, *Political Judgement*.
- 25 Quoted in Whittle and Cooper, *Privacy*, 16.
- 26 For example, Baxter *et al.*, “Life-Changing Event.”
- 27 Endendijk *et al.*, “He is a Stud, She is a Slut!”
- 28 McTaggart, “Rachel Johnson.”
- 29 Stamp, “Who Is Theresa May.”
- 30 Ainge Roy, “Jacinda Ardern.”
- 31 RTE, “What Attracted Leo Varadkar to Fine Gael?”
- 32 Ryan, “Ready for the Long Road.”
- 33 This argument is indebted to Susan Moller Okin’s contention that girls may be rendered ‘vulnerable by anticipation of marriage’ if they shape their education and career choices according to a conception of the role of ‘wife’ that they expect to fulfil within a future (unjust) marriage arrangement. See her *Justice, Gender, and the Family*, 142–6.
- 34 John Rawls notes that any ‘competent moral judge’ must possess a ‘sympathetic knowledge of those human interests which, by conflicting in particular cases, give rise to the need to make a moral decision. The presence of this characteristic is evidenced by the following: First, by the person’s direct knowledge of those interests gained by experiencing, in his own life, the goods they represent. The more interests which a person can appreciate in terms of his own direct experience, the greater the extent to which he satisfies this first test’. See Rawls, “Outline,” 179.
- 35 Thiele, *Heart of Judgement*, 89.
- 36 Hooker, “Deep Personal Relationships.”

- 37 Fried, "Privacy," 475.
- 38 Kaufman, *How to Be a Minister*, 10.
- 39 Macklem, *Independence of Mind*, chap. 2.
- 40 James Griffin notes: 'If our deliberation and decisions about how to live were open to public scrutiny, our imperative for self-censorship and self-defence would come feverishly into action'. See Griffin, *On Human Rights*, 224.
- 41 Nagel, *Concealment and Exposure*, 15.
- 42 See Onora O'Neill's contribution to Riddell *et al.*, "Tony Blair's 'Media' Speech," 489–90.
- 43 Nagel, *Concealment and Exposure*, 13.
- 44 Hursthouse, "Practical Wisdom," 305.
- 45 Thompson, *Restoring Responsibility*, 236–7.
- 46 Devine, "Privacy and Hypocrisy."
- 47 Runciman, *Political Hypocrisy*, esp. chap. 7.
- 48 Schauer, "Can Public Figures Have Private Lives?"
- 49 *Ibid.*, 306.
- 50 *Ibid.*, 307.
- 51 *Ibid.*, 308.
- 52 Political privacy may turn out to be an instance of what Anita Allen terms 'unpopular privacy'. See Allen, *Unpopular Privacy*.

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