

How Representation Bears on the Justification of Official Secrecy

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Democratic culture looks askance at secrecy. In official hands especially, it summons our worst suspicions about corruption and abuse of authority. Secrecy is widely tolerated, to be sure, but only as a kind of concession—as a regrettable if necessary response to the non-ideal conditions in which governments operate. Against this conventional understanding, I argue that there are in fact principled reasons for embracing (properly-constrained) official secrecy in democratic societies, despite the accountability problems to which secrecy may give rise.

Those reasons are best understood, in my view, in relation to a conception of political representation. I sketch one such conception in the first part of the essay, taking inspiration from recent work by Jane Mansbridge, Philip Pettit, and Jeremy Waldron. Waldron in particular shows the promise and perils of rooting public officials' obligations in a theory of representation. Against his monistic view of representative accountability, I sketch a pluralistic account, emphasizing that constitutional democracy entails a diversity of representative roles. Taking those roles seriously, I argue, means recognizing that different officials should face different demands of public accountability—that they should be accountable to distinct groups or agents, in distinct ways, at distinct times. This variegated picture of accountability grounds the more or less stringent standards of transparency to which legislators, executives, judges, and other public officials are variously subject.

Certain representative roles demand a measure of secrecy, I argue. Yet my account also imposes limits on what kinds of secrets public officials can permissibly keep (and for how long). After summarizing these implications of the account in general terms, I turn in the final part of the paper to the examples of legislative and judicial deliberation. I defend the permissibility of secret talk in both institutional contexts, though subject to stricter limits in the legislature than in the courts. In the end, what the essays suggests is that disagreements about the proper scope of official secrecy are rarely purely empirical. They do not turn merely on conflicting assessments of the likely effects of this or that form of concealment. Rather, such disagreements are typically rooted in normative disputes about the proper understanding of a given representative role—disputes, in other words, about what it means to be a good legislator, a good executive, a good judge, etc.