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ANONYMITY AND DEMOCRATIC CITIZENSHIP

James A. Gardner*

INTRODUCTION: THE PROBLEM OF ANONYMOUS PARTICIPATION IN DEMOCRATIC PROCESSES

Around this time of year—the fall of an election campaign—if you google my name, here is what you typically will find. The first entry about me is usually my faculty web page. I like that. My professional identity has a lot to do with how I think of myself, and it certainly is the main reference point for my activities in the public sphere. It is an identity that I actively manage and can control to some degree, and it makes sense that this should be the first piece of information someone would find about me when searching a publicly available resource.

If you scroll down a little further on the first page of search results, however, you are likely to find a link to *The Huffington Post*. This link will not take you to any material by or about me in the content of *The Huffington Post* itself, in whose pages I doubt my name has ever appeared. Instead, it will take you to a page created by *The Huffington Post* that instantaneously culls from Federal Election Commission disclosure information all financial contributions I have recently made to candidates for federal office, along with a map showing the location of my home.

I don't like that at all. First, it's creepy, and a little frightening—what if some nutty supporter of the opponent of a candidate to whom I contributed decides to retaliate? This site literally furnishes a road map. Still, that possibility is so remote that I don't give it any thought. What does bother me, however, is the much likelier prospect that my students, looking casually for information about me in a moment of boredom, are directed almost immediately to an aspect of my political life that I would rather they not know, or at least that I wish they had to work much harder to learn. This is because I teach Constitutional Law, a politically loaded subject in which it is very easy for students to dismiss—and therefore to fail to profit from—the teaching of professors whom they view as tainted by partisanship. I take great pains in this course to maintain an appearance of ideological and partisan neutrality, and I am convinced that it heightens my effectiveness for a very wide range of students. I try, in other words, to maintain

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a certain anonymity in my political life insofar as my students are concerned, even though I do not generally seek such anonymity in other domains of my life. In breaching my contextual anonymity, *The Huffington Post*—and indirectly the Federal Election Commission, whose resources are apparently organized in a way that makes this use possible—undermines my efforts to control the way I present myself in different domains, with potentially negative ramifications for my effectiveness in one of these domains: my life as a professional teacher of Constitutional Law.

I find this mildly upsetting, but should anyone really care? Is the disclosure to my students of my political contributions in fact beneficial, and if so, to whom—to me? To my students? To the general public? Are my reservations reasonable, or unduly self-centered? Disclosure of my contributions in this format has not thus far affected my behavior. Should it? Would our political system be worse off if people in situations like mine stopped contributing to avoid disclosure, or is that precisely the decision to which citizens who wish to participate in politics ought to be put?

Because Americans so often reductively equate democratic politics with voting, when we think of anonymity in democratic politics we typically think mainly of the secret ballot. But political participation in modern democratic life can take many forms:¹ financial contributions to candidates, political parties, and advocacy groups; petition signing; political speech and debate; communication with and lobbying of officials; attending public meetings; holding office; and any of a host of other obligations of citizenship such as paying taxes, obeying the law, or performing public service or charitable work in one's community.² Any or all of these may in principle be performed on a public stage in the full glare of the public spotlight; or anonymously, without any or with only very limited public knowledge and awareness; or in a vast middle ground where actors may be connected to their political actions in only some respects, in only some domains, or for only some observers.

Numerous recent developments have called into question not only the legality but also the soundness as a matter of public policy of rules and practices granting or denying anonymity to political actors in a wide variety of situations. Just last Term, the Supreme Court upheld a state law requiring public disclosure of ballot initiative petitions in a manner that reveals the names and addresses of the signers.³ Another decision from last Term, *Citizens United v. FEC*,⁴ invalidated restrictions on corporate campaign spending out of general treasury funds.⁵ The prospect of significantly increased

¹ SIDNEY VERBA ET AL., *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS* (1995).

² *See id.* at 42.

³ *Doe v. Reed*, 130 S. Ct. 2811 (2010).

⁴ 130 S. Ct. 876 (2010).

⁵ *Id.* at 913.

corporate political spending has generated a flurry of proposals to tighten disclosure requirements in an effort to ensure publicity of the ultimate sources of funding for campaign advertisements.⁶ At the same time, troubling questions have been raised about the utility of public disclosure of the names of individuals who contribute only small amounts to candidates and political organizations.⁷ Lurking behind many of these questions appears to be underlying doubt about the propriety and value of anonymous political speech, especially in the internet age of easy access both to potentially huge audiences and to the cloak of anonymity, a set of conditions that differs significantly from those obtaining when the Court last confronted the constitutionality of prohibitions on anonymous campaign speech.⁸

Although judicial decisions establish some parameters, it is clear that the law does not begin to solve all the potential problems that might arise in this area, and that legislatures have a great deal of latitude to protect or destroy the anonymity of political participation. Whether and to what extent they should promote, tolerate, or discourage anonymity is therefore a live and potentially significant question. My goal here is to provide a framework for thinking about such policy choices, and indirectly the way they might be resolved in legal disputes.

The significance of anonymity as a political practice, if indeed it has any, lies in its capacity to affect the behavior of those who participate in democratic politics: anonymity has been both praised for freeing citizens to vote and speak their true beliefs,⁹ and condemned for providing convenient cover to harmful or democratically undesirable behavior.¹⁰ Any attempt to evaluate policies permitting anonymity must therefore

⁶ The most prominent of these is the so-called “DISCLOSE Act” introduced in Congress, Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act, H.R. 5175, 111th Cong. (2010), which passed the House but not the Senate. *See* 156 CONG. REC. S6278, S6285 (daily ed. July 27, 2010).

⁷ *See* Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 276, 300–01 (2010); Lloyd Hitoshi Mayer, *Disclosures About Disclosure*, 44 IND. L. REV. 255, 280–82 (2010); William McGeeveran, *Mrs. McIntyre’s Persona: Bringing Privacy Theory to Election Law*, 19 WM. & MARY BILL RTS. J. 859, 864 (2011).

⁸ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995).

⁹ *See Talley v. California*, 362 U.S. 60, 64–65 (1960) (“Persecuted groups and sects . . . throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. . . . It is plain that anonymity has sometimes been assumed for the most constructive purposes.”); *People v. Duryea*, 351 N.Y.S.2d 978, 989 (N.Y. Sup. Ct. 1974) (“Anonymity has been, historically, the medium of dissidents, shielding them from the retaliatory power of the establishment and . . . encouraging them to express unpopular views.”); *see also* JOHN H. WIGMORE, *THE AUSTRALIAN BALLOT SYSTEM AS EMBODIED IN THE LEGISLATION OF VARIOUS COUNTRIES* 52–53 (Boston, Boston Book Co. 2nd ed. 1889) (arguing that the secret ballot allows for the “free and honest expression of the convictions of every citizen”).

¹⁰ *See Canon v. Justice Court for Lake Valley Judicial Dist.*, 393 P.2d 428, 435 (Cal. 1964) (“[A]nonymity all too often lends itself, in the context of attacks upon candidates in the pre-election period, to smears, as a result of which the electorate is deceived.”); *Morefield v. Moore*, 540 S.W.2d 873, 874–75 (Ky. 1976) (arguing that anonymity is “unnecessary” and “repulsive” to democratic objectives of honesty and fairness in the context of public elections);

assess and evaluate the kind of behavior anonymity elicits from political actors. In this paper, I approach this problem in two steps. Before we can judge a policy's effects on political behavior we need to know how democratic citizens *ought* to behave. I thus begin by identifying some common and widely shared baseline norms of good democratic citizenship. Next, I turn to the available empirical evidence to assess whether practices of political anonymity in fact induce citizens to act in ways that are closer to or farther from the ideal. This analysis suggests two preliminary and not very satisfying conclusions. First, the effect of anonymity on behavior is so highly contingent and context-dependent that generalizations are both difficult and risky. Second, policies regarding anonymity are likely to have an effect on behavior of the citizenry only at the margins—many or perhaps most people, that is, would probably behave the same way in most circumstances whether or not they can do so anonymously. In the end, more research is needed addressed specifically to the effect of anonymity on behavior in the political arena.

I. ANONYMITY AND THE OBLIGATIONS OF DEMOCRATIC CITIZENSHIP

There is no single, “correct” way to structure or conduct democratic politics. On the contrary, principles of democracy may be institutionalized in a great many ways, and the decision to adopt one set of practices instead of others necessarily involves making choices that can have significant implications for the kind of politics that ultimately emerges. Like any of a host of other choices, the choice between regimes of anonymity and publicity thus holds greatest relevance as a factor contributing to the quality of public life and to our ability to achieve the goals that lead us in the first place to choose democracy as a form of political and social organization.

Anonymity¹¹ has potential significance for the practice of politics in at least two ways. First, practices of anonymity permit political actors to conceal two kinds of

Commonwealth v. Evans, 40 A.2d 137, 138–39 (Pa. 1944) (removal of the cloak of anonymity “raise[s] the ethical standards of political discussion, . . . promote[s] fair play and fair competition in politics, . . . banish[es] cowards from the political arena, and extirpate[s] the dirty business of surreptitious character assassination”); see also JOHN STUART MILL, *Considerations on Representative Government*, in ON LIBERTY AND OTHER ESSAYS 205, 354 (John Gray ed., Oxford Univ. Press 1991) (1926) (arguing that secret ballots lead to selfish voting in violation of democratic duty to vote for the “public good”).

¹¹ I use the term “anonymity” rather than “privacy” here because, although there is some overlap between the two concepts, they may usefully be distinguished for present purposes, and because anonymity is closer than privacy to the phenomenon I wish to explore. Both privacy and anonymity have concealing functions, but what they conceal tends to differ. As I understand the terms, privacy generally conceals *that* a thing has been done. Anonymity, in contrast, generally conceals only *who* has done a thing, not that it has been done. Sexual behavior, for example, is usually conceived as private rather than anonymous because what is appropriately concealed is that sexual activity has occurred. The participants, of course, typically know each other (though they need not, in which case the sex would also be anonymous). Voting is usually conceived as anonymous rather than private because we know people have voted, and

information about themselves that is quintessentially relevant to democratic political decision making: (1) where they stand on questions before the citizenry or the electorate; and (2) the intensity of their feelings and preferences. Anonymity permits citizens to conceal their substantive views on politically salient questions when it permits them to avoid being connected to actions that they take or in which they participate that have the political effect of providing support for a particular candidate, measure, or viewpoint. The most obvious example of this effect of anonymity is the secret ballot, which casts a cloak of anonymity around the actual votes of eligible citizens, but other practices can have similar effects. For example, rules protecting the anonymity of political speakers also prevent others from linking an individual to a particular point of view expressed in an anonymous communication.

Likewise, anonymity also in certain circumstances permits political actors to conceal the intensity of their substantive political preferences. For example, as the Supreme Court has frequently observed, financial contributions to a candidate for office express not only an underlying substantive preference for the policies to which that candidate is committed, but also, by their magnitude, give at least some rough indication of how strongly the contributor feels.¹² The same is true of almost any action taken in support of a political cause. A voter's speech in casual conversation might communicate his or her support of some particular candidate or measure, but talk can be cheap. In contrast, the voter's willingness to invest the additional effort of actually casting a ballot, signing a petition, writing a letter, attending a meeting, or volunteering for a campaign, for example, all communicate a level of intensity of feeling and commitment that mere speech might not disclose.

Even more fundamentally, however, anonymity can permit citizens to lead a certain kind of life—one that is segmented and therefore lacks a certain unity or, to use

we know how many and what the vote totals are, but we just don't know who has cast which votes. Voting may also be private in the sense that whether a particular individual has voted or not may be unknown, though it is recorded and in that sense known within a certain circle. Typically, people do not consider the fact that they have voted to be information that needs to be concealed in the same way as the actual votes they have cast.

There is obviously some overlap between the concepts. Because privacy conceals that a thing has been done, it often necessarily also conceals who has done it. Yet people who act in privacy often are known to one another, and so describing a private act as anonymous may not add much.

Another way in which the two concepts differ is in the risk of public disclosure: acts performed anonymously typically are less liable to discovery than those performed privately. Because privacy does not imply anonymity to those who observe or participate, private acts—along with the identity of the actor—may be revealed by a potentially large number of people, increasing the risk of complete disclosure. Anonymous acts, in contrast, are rendered anonymous precisely by the fact that nearly or literally no one is capable of linking the actor to the act, and thus the risk of disclosure is very low. However, I want to make clear that I do not dispute that there may be many circumstances in which the functional difference between privacy and anonymity may not much matter.

¹² *Buckley v. Valeo*, 424 U.S. 1, 21 (1976); *McConnell v. FEC*, 540 U.S. 93, 135 (2003); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 386 (2000).

a normatively more loaded expression, integrity. That is because one of the central effects of anonymity is to permit citizens to say things or to display certain kinds of behavior in one domain of life and then contradict themselves, in word or deed, in another. The secret ballot, for example, permits an individual to announce support for a candidate or position in one setting and then in the privacy of the voting booth to vote for a candidate or measure taking a contrary position.¹³ Anonymity in political speech permits a citizen to say one thing among friends or associates and then, without detection, to publish an anonymous attack on that same position. Anonymity in political contributions permits an individual to profess support for a principle in one domain and then contribute without fear of exposure to organizations dedicated to undermining it.

This characteristic of anonymity can have obvious ramifications for how people act in the political arena. It permits behavior that is variable and inconsistent because it is untested—and often untestable—against observable behavior in other settings. Perhaps worse, anonymity permits citizens to speak and act insincerely in certain aspects of their political lives. For example, practices of anonymity in public opinion polling and in voting are often thought to give rise to the commonplace observation of a significant gap between the proportion of white voters who claim to pollsters that they plan to vote for black candidates and those who actually do so.¹⁴ On the other hand, anonymity is also frequently credited with permitting citizens to speak and behave honestly by insulating them from pressures of observation that might inhibit their willingness to speak and act consistently with their own views. Anonymity is often credited, for example, with facilitating political dissent during the American revolutionary period¹⁵ and, following introduction of the secret ballot, in freeing voters from coercion by officials and parties.¹⁶

¹³ See MILL, *supra* note 10, at 355; Geoffrey Brennan & Philip Pettit, *Unveiling the Vote*, 20 BRIT. J. POL. SCI. 311, 326 (1990).

¹⁴ This phenomenon is sometimes known as the “Bradley Effect” after Tom Bradley, the Los Angeles mayor who lost the California gubernatorial race in 1982 despite being ahead in the polls immediately preceding Election Day. For a description, see Gregory S. Parks & Jeffrey J. Rachlinski, *Implicit Bias, Election ‘08, and the Myth of a Post-Racial America*, 37 FLA. ST. U. L. REV. 659, 702–09 (2010). Several other examples of this kind of behavior are described in Adrian Vermeule, *Open-Secret Voting* 6–7 (Harv. L. Sch. Pub. Law & Legal Theory Working Paper Series, Paper No. 10-37, 2010), available at <http://ssrn.com/abstract=1646435>.

¹⁵ See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 360–69 (1994) (Thomas, J., concurring).

¹⁶ Or at least that was its avowed purpose. There is some evidence, however, that the introduction of the secret ballot simply shifted at least some amount of coercion and bribery into other forms, including inducing voters of the opposing party to stay home through bribery, Gary W. Cox & J. Morgan Kousser, *Turnout and Rural Corruption: New York as a Test Case*, 25 AM. J. POL. SCI. 646, 654–56 (1981), or physical intimidation, TRACY CAMPBELL, *DELIVER THE VOTE: A HISTORY OF ELECTION FRAUD, AN AMERICAN POLITICAL TRADITION—1742–2004*, at 99–102 (2005). It also seems to have encouraged other forms of illicit behavior such as disenfranchisement, *id.* at 102–06, intimidation of officials responsible for counting ballots, *id.*

The ways in which anonymity is capable of influencing the behavior of citizens and the nature of their actions in the political arena raise important questions about how we ought to evaluate it. First, what kind of life is suitable for democratic citizens to lead? Must it have some unity or integrity? Is it permissible for citizens to lead political lives that are in some sense divorced from or even inconsistent with the lives they lead in the spheres of family, work, and the local community?

Second, what kind of judgment do democratic citizens owe their fellow citizens? Do they owe judgments that are founded in, and thus consistent with, a unified and well-considered life? Or is it sufficient (or even desirable) for citizens to treat their political lives as distinct domains and to act in politics consistent with a persona that exists solely or mainly for purposes of political action? Ought citizens to be able to conceal or misrepresent their positions, beliefs, and intensity of feelings while acting in the political arena? Do they owe their fellow citizens judgments that are in some sense “honest” and “true,” or merely ones that are publicly acceptable?¹⁷

Finally, what is the effect of anonymity, where it occurs, on citizen behavior? Does it induce or facilitate behavior that is consistent with democratic ideals? Does anonymity teach any particular kind of civic lessons, or invite citizens to draw any particular kinds of conclusions, about the proper forms of democratic behavior, and if so is the lesson the right one?

None of these questions can be answered without reference to some conception of what democratic citizenship ideally requires. In the next section I review some basic principles of democratic theory to help generate accounts of democratic citizenship against which contemporary practices of anonymity might be evaluated. That will put us in a better position to determine whether the kinds of effects that anonymity may have on political behavior moves us toward or away from the standards of democratic behavior to which citizens ought to aspire.

II. DEMOCRATIC THEORY AND IDEALS OF POLITICAL BEHAVIOR

Although there are almost as many democratic theories as there are democratic theorists, for the most part contemporary accounts of democracy tend to fall into one of two categories often designated in consideration of their historical antecedents as liberal or republican, or in consideration of their most prominent conceptual features as aggregative or deliberative.¹⁸ This section begins with a description of some basic

at 106–10, and the development of secrecy-piercing methods of fraud such as the “chain ballot,” in which party agents obtained an extra blank ballot, filled it out for their candidates, and then bribed voters to go into the polls and cast the ballot, but did not pay them until they came back out with a fresh, blank ballot, a process that could be repeated all day. *Id.* at 137–38.

¹⁷ There is of course a significant definitional question here: if people owe a true or honest opinion, what counts as one? Or, the better way to ask the question is: what is a politically *salient* opinion? One that is self-regarding? Public-regarding? Defensible in principle, using publicly acceptable reasons? Or of some other kind?

¹⁸ IAN SHAPIRO, *THE STATE OF DEMOCRATIC THEORY* 10 (2003).

features of the two main models. It then explores some common ground between the models by identifying several traits that both models agree citizens ought to possess, and that might in principle be influenced by practices of anonymity. It turns finally to a brief review of some well-known theoretical perspectives on how anonymity might affect the behavior of citizens in comparison to these shared ideals.

A. Models of Democracy

The two major contemporary classes of democratic theories, liberal/aggregative and republican/deliberative, can be conceived as lying roughly at opposite ends of a spectrum marking the degree to which emphasis is placed on the individuals who comprise a society or on the collectively self-governing communities that such individuals inhabit. Classic liberal theories of the social contractarian variety, conceived in reaction to the medieval belief that forms of social and political organization were unchangeable and prescribed by nature, tend to stress the sovereignty of the individual and to understand participation in politics as guided primarily by every individual's independent use of reason.¹⁹ On this conception, individuals formulate their political opinions outside of politics and then make periodic forays into politics for the purpose of asserting their views and protecting or advancing their personal interests. This view is understood as "aggregative" because it conceives of democracy as little more than a mechanism to determine the political preferences of each individual and "tot them up."²⁰

More recent extensions of classic liberal democratic theory tend to stress even more heavily the aggregative aspect of democratic processes. Classical liberalism saw no contradiction in conceiving of individuals as obliged simultaneously to answer only to the dictates of independent reason and to exhibit political virtue by attempting at all times to advance the common good rather than their private self-interest.²¹ Modern utilitarian and economic theories of democracy, in contrast, understand democracy mainly as a procedure for maximizing social utility by recording and aggregating as accurately as possible the private self-interest of each citizen.²² The advantage of democracy on this view is that its inclusivity and transparency permit identification of utility-maximizing policies more accurately than do other forms of governmental organization. However, for such a system to work properly, individuals must attend

¹⁹ A leading exemplar is JOHN LOCKE, *Second Treatise of Government*, in TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1960) (1690); see also SHAPIRO, *supra* note 18, at 3.

²⁰ SHAPIRO, *supra* note 18, at 3.

²¹ E.g., RICHARD DAGGER, CIVIC VIRTUES: RIGHTS, CITIZENSHIP, AND REPUBLICAN LIBERALISM 41–60 (1997); MICHAEL J. SANDEL, DEMOCRACY'S DISCONTENT 127–31 (1996); Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1566–71 (1988). This result was achieved partly by relocating and thinning natural law from dictating the thick organization of society to requiring only that individuals act to achieve the common good, in whatever form and with whatever prescriptions reason might reveal it to possess.

²² ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY (1957).

primarily to their own self-interest. The common good is achieved in a democracy, but through the impersonal operation of its aggregating mechanisms rather than through self-conscious attempts by individuals to determine how to advance it.²³

In contrast to liberal/aggregative theories, republican/deliberative theories emphasize collective deliberation as the distinguishing feature of democracy.²⁴ Such theories explicitly reject the proposition that a meaningful and legitimately binding public will can be identified by aggregating the isolated private wills of individual citizens.²⁵ Taking face-to-face deliberation among political equals as the aspirational model of collective self-governance,²⁶ theories of deliberative democracy contend that an expression of the public will can legitimately bind those who are subject to it only insofar as it is reasoned, well-informed, and formulated after mutual consultation and discussion that is inclusive, respectful, and aimed at achieving mutually satisfactory agreement among society's members—when it is, in a word, deliberative.²⁷

Unlike liberal and economic theories of democracy, deliberative theories do not conceive of political beliefs and interests as exogenously determined preferences that citizens bring with them into the political arena. Instead, deliberative theories understand preferences to be formed endogenously, in the crucible of politics itself, through the give and take of discussion with other citizens of different views.²⁸ Deliberation is thus doubly important in these theories: it is not only the forum in which citizens forge agreement on what to do, but also the very means by which they legitimately bind themselves to what they have collectively decided.²⁹

Citizens carry a heavy burden in deliberative models of democracy. When engaged in democratic deliberation, they must treat each other with mutual respect and civility,³⁰ and must work sincerely and cooperatively toward determining the truth.³¹ They must

²³ *Id.*

²⁴ Joshua Cohen, *Deliberation and Democratic Legitimacy*, in *THE GOOD POLITY* 17, 18 (Alan Hamlin & Philip Pettit eds., 1998).

²⁵ JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* (William Rehg trans., MIT Press 1996) (1992); Cohen, *supra* note 24, at 18; IRIS MARION YOUNG, *INCLUSION AND DEMOCRACY* (2000).

²⁶ JAMES S. FISHKIN, *THE VOICE OF THE PEOPLE: PUBLIC OPINION AND DEMOCRACY* 4–5 (1995).

²⁷ Cohen, *supra* note 24; HABERMAS, *supra* note 25; YOUNG, *supra* note 25.

²⁸ Cohen, *supra* note 24, at 22–23; SHAPIRO, *supra* note 18, at 22–23; YOUNG, *supra* note 25, at 6.

²⁹ AMY GUTMANN & DENNIS THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* 3–5 (2004).

³⁰ See AMY GUTMANN & DENNIS THOMPSON, *DEMOCRACY AND DISAGREEMENT* 52–53 (1996); JOHN RAWLS, *The Idea of Public Reason Revisited*, in *THE LAW OF PEOPLES* 129, 136–37 (1999); HENRY S. RICHARDSON, *DEMOCRATIC AUTONOMY: PUBLIC REASONING ABOUT THE ENDS OF POLICY* 89–91 (2002).

³¹ Cohen, *supra* note 24, at 24; David Estlund, *Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority*, in *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS* 173, 196–97 (James Bohman & William Rehg eds., 1997); Gerald F.

remain open-minded and receptive toward views and perspectives expressed by others.³² They must support arguments or positions they advance with reasons rather than mere assertions, and in so doing must confine themselves to invoking “public reasons,” meaning reasons that all other reasonable citizens might in principle accept, a category typically said to exclude justifications based on personal self-interest.³³ And they must strive in deliberation to transcend disagreement by persuading others, rather than attempting to finesse disagreement through strategic bargaining,³⁴ or to override it through raw exercises of the power of numerical superiority.³⁵

B. Attributes of Ideal Citizenship

For all their fundamental disagreement about the purposes and proper operation of democracy, both broad classes of democratic theory can agree on at least some of the traits that an ideal democratic citizen ought to possess. I shall focus on three of these—sincerity, independence, and public-mindedness—because they are most clearly relevant to the impact that policies of anonymity might have on the conditions, and thus the behavioral incentives, that citizens face when acting in the political arena.

Sincerity seems to be favored, and even required, by every theory of democracy. Citizens, it seems, should vote, speak, signal support, contribute, sign petitions, and in general behave in the political arena by acting on and expressing themselves in accordance with their actual beliefs, however those beliefs might ultimately be formulated. Deliberative theories tend strongly to disfavor insincerity because it is a form of strategic behavior that is thought to undermine true deliberative engagement and thus to impair the ability of deliberators to reach a genuine consensus.³⁶ Utilitarian theories

Gaus, *Reason, Justification, and Consensus: Why Democracy Can't Have It All*, in *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS*, *supra*, at 207–08.

³² GUTMANN & THOMPSON, *supra* note 30, at 15–16; RICHARDSON, *supra* note 30, at 143–45; YOUNG, *supra* note 25, at 3; *cf.* MELISSA S. WILLIAMS, *VOICE, TRUST, AND MEMORY: MARGINALIZED GROUPS AND THE FAILINGS OF LIBERAL REPRESENTATION* (1998) (discussing the problem of historically marginalized groups' access to the deliberative process).

³³ Joshua Cohen, *Democracy and Liberty*, in *DELIBERATIVE DEMOCRACY* 185, 193–95 (Jon Elster ed., 1998); RAWLS, *supra* note 30, at 140–41. *But see* ROBERT E. GOODIN, *REFLECTIVE DEMOCRACY* 81–88 (2003) (arguing that bargaining is not inconsistent with meaningful deliberation); Jane Mansbridge et al., *The Place of Self-Interest and the Role of Power in Deliberative Democracy*, 18 *J. POL. PHIL.* 64, 64, 69 (2010) (rejecting exclusion of self-interested bargaining from accounts of normatively desirable democratic deliberation).

³⁴ THOMAS CHRISTIANO, *THE RULE OF THE MANY: FUNDAMENTAL ISSUES IN DEMOCRATIC THEORY* 117 (1996); BERNARD MANIN, *THE PRINCIPLES OF REPRESENTATIVE GOVERNMENT* 198–201 (1997); CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* 72 (1993).

³⁵ Cohen, *supra* note 24, at 23; MANIN, *supra* note 34, at 189–92; RICHARDSON, *supra* note 30, at 49–52; YOUNG, *supra* note 25, at 8.

³⁶ *See* HABERMAS, *supra* note 25, at 4; MANIN, *supra* note 34, at 198–201; SUNSTEIN, *supra* note 34, at 72–73. *But see* GOODIN, *supra* note 33, at 81–88.

generally predict that insincerity leads to inefficiency because it obscures the preferences that must be aggregated for accurate utility-maximization.³⁷ Insincerity is also sometimes viewed as destructive and even toxic by theories of democracy that understand mutual trust to be an essential foundation of successful democratic life.³⁸ This shared democratic distaste for insincerity has sometimes been expressed in the United States in the form of legislative restrictions on false or malicious campaign speech.³⁹

Independence is a second characteristic of good citizenship commended by both major classes of democratic theory. Independence plays an especially prominent role in liberal theories. Both Kantian theory and its modern Rawlsian variant view the self as antecedent to its political opinions, meaning that the citizen's political reasoning proceeds by hypothesis in isolation from, and thus independently of, the reasoning of others.⁴⁰ Indeed, the ability to reason independently has in the Anglo-American tradition often been understood as a minimal requirement for the extension of full rights of citizenship and political participation. Thus slaves, women, and the poor were long excluded from the franchise on the theory that their almost complete economic dependence on their owners, husbands, and employers, respectively, deprived them of the ability to formulate a political will with the requisite degree of independence.⁴¹ Political parties also were, and to this day remain, objects of liberal democratic suspicion for their supposed ability to induce in their adherents a kind of blind loyalty inconsistent with the kind of independent judgment that all citizens have an obligation to undertake.⁴² Contemporary rational choice models of democracy take the requirement of independence to its greatest extreme insofar as they maintain that formal independence of summed preferences is a condition of accurate calculations of utility maximization.⁴³

Deliberative conceptions of democracy also conceive of independence as a characteristic of the good democratic citizen. Although deliberation is, to be sure, a social

³⁷ On the other hand, utilitarian theories of democracy have difficulty finding a ground upon which to condemn strategic insincerity directed to other voters and citizens; presumably the strategic deployment of insincerity will occur only when individuals calculate such behavior to be in their interest. Classical liberal theories tend to handle insincerity by resort to ground norms of virtue (perhaps informed by conceptions of natural law and personal, even republican, honor). See DAGGER, *supra* note 21, at 46–57, on cooperation and fair play, which constructs a theory of cooperation as a necessity of successful collective self-rule.

³⁸ *E.g.*, TRUST AND GOVERNANCE (Valerie Braithwaite & Margaret Levi eds., 1998).

³⁹ See *Developments in the Law—Elections*, 88 HARV. L. REV. 1111, 1272–98 (1975); William P. Marshall, *False Campaign Speech and the First Amendment*, 153 U. PA. L. REV. 285 (2004).

⁴⁰ MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982).

⁴¹ Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 STAN. L. REV. 335, 340–41 (1989).

⁴² Progressives were especially consistent critics of parties on these grounds. See Richard Hofstadter, *Introduction to THE PROGRESSIVE MOVEMENT 1900–1915*, at 10 (Richard Hofstadter ed., 1963); WILLIAM ALLEN WHITE, *THE OLD ORDER CHANGETH: A VIEW OF AMERICAN DEMOCRACY* 13–22 (1910).

⁴³ *E.g.*, KENNETH J. ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES 22–23 (2d ed. 1963).

and collective activity, effective deliberation demands that citizens enter into and participate in deliberation with the independence necessary to recognize, assert, advance, and defend their own perspectives.⁴⁴ Independence on this conception, however, does not mean formal social apartness; rather, citizens incur an obligation in deliberation to hold themselves open to persuasion and to seek consensus. As a result, accommodation and deference, either to the collectivity or to individual members, is also part of the deliberative process.⁴⁵ By the same token, however, yielding in deliberation to the opinions and desires of others must issue from a self-conscious decision, undertaken independently and voluntarily, without coercion, by the actor, if the consensus sought by deliberation is to count as legitimate.⁴⁶

Public-mindedness is the third and last quality I will discuss here that is required of good citizens in both aggregative and deliberative accounts of democracy. Although the two classes of theories often disagree on the substantive merits of political justice, they typically agree that citizens have an obligation to act according to some conception of the collective good.⁴⁷ Deliberative and republican models require this kind of public-mindedness very strongly and openly; in such theories the naked pursuit of self-interest is generally regarded as a profound political error.⁴⁸

With the prominent exception of contemporary economic theories of democracy⁴⁹—which I will accordingly set aside as outside the main theoretical consensus—liberal theories of democracy also tend to value public-mindedness.⁵⁰ Classical liberalism, for example, placed great stock in the virtue of political actors, meaning among other things their willingness to pursue the common good.⁵¹ And although political theorists such as Hume and Madison advocated designing political institutions

⁴⁴ See the critiques of deliberation based on the view that they ignore the dynamics of power; e.g., Mansbridge et al., *supra* note 33; Lynn M. Sanders, *Against Deliberation*, 25 POL. THEORY 347, 362 (1997).

⁴⁵ See Estlund, *supra* note 31, at 181–87.

⁴⁶ MANIN, *supra* note 34, at 190–91; WILLIAMS, *supra* note 32, at 23.

⁴⁷ The one prominent exception is economic theories of democracy, which conceive of citizens as having no obligation in the political arena beyond advancing their self-interest to the extent they deem worthwhile. See, e.g., DOWNS, *supra* note 22, at 36 (“[E]ach citizen casts his vote for the party he believes will provide him with more benefits than any other.”). For this reason, I will from this point forward drop the economic account from my discussion, even of liberal democratic theory. I believe this is justified, however, because of the descriptive and normative weakness of the strongest forms of economic and rational choice theories of democracy.

⁴⁸ See, e.g., CHRISTIANO, *supra* note 34, at 6; GOODIN, *supra* note 33, at 18; CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* 20–21 (1993).

⁴⁹ See *supra* note 22 and accompanying text.

⁵⁰ See, e.g., RAWLS, *supra* note 30, at 136; SHAPIRO, *supra* note 18, at 3.

⁵¹ See HENRY ST. JOHN, *THE IDEA OF A PATRIOT KING* (Sydney W. Jackman ed., Bobbs-Merrill Co. 1965); Edmund Burke, Speech at the Conclusion of the Poll (Nov. 3, 1774), in 3 *THE WRITINGS AND SPEECHES OF EDMUND BURKE* 64, 69 (Warren M. Elotson & John A. Woods eds., 1996); *THE FEDERALIST* NO. 10 (James Madison).

on the assumption that “every man ought to be supposed a knave,”⁵² it is clear that knavery was understood as the consequence of the predictable failure of human beings to live up to their own ideals, not as a behavioral aspiration in itself.⁵³ Modern liberal theories in the Kantian tradition frequently claim that the route to justice lies in the willingness and capacity of citizens to attempt to transcend their own self-interest by striving for impartiality, self-effacement, and open-mindedness in both private reflection and public deliberation,⁵⁴ and this imposes on them an obligation to undertake their public political acts consistent with these normative commitments.

C. Anonymity in Democratic Theory

Although the literature of democratic theory is vast, little has been written from any perspective concerning the compatibility of citizen anonymity with the theoretical premises of democracy.⁵⁵ Occasionally, the attitude of political theorists toward anonymity may be inferred from other aspects of their writings. Hannah Arendt, for example, whose work falls primarily on the civic republican side of the ledger, argues that the classical *vita activa* provides the best and only feasible model for meaningful political life.⁵⁶ “Speech and action,” according to Arendt, “are the modes in which human beings appear to each other, not indeed as physical objects, but *qua* men.”⁵⁷ In so appearing to each other, Arendt maintains, “the primordial and specifically human act must at the same time contain the answer to the question asked of every newcomer: ‘Who are you?’”⁵⁸ That question, Arendt contends, is revealed by both words and deeds, enacted on a public stage.⁵⁹ On this view, anonymity seems deeply contrary to the fundamental requirements of a good political life.

To the extent that deliberative theories of politics take for their model the intimate, face-to-face, and intrinsically non-anonymous political life of the ancient *agora*,⁶⁰

⁵² DAVID HUME, *Of the Independency of Parliament*, in *ESSAYS: MORAL, POLITICAL, AND LITERARY* 42 (Eugene F. Miller ed., rev. ed. 1987) (italics omitted).

⁵³ *E.g.*, THE FEDERALIST NOS. 10, 51 (James Madison). Madison notes, “[T]he effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may . . . first obtain the suffrages, and then betray the interests of the people . . . [This possibility, along with hard experience,] has taught mankind the necessity of auxiliary precautions.” THE FEDERALIST NO. 10, at 82 (James Madison) (Clinton Rossiter ed., 1961).

⁵⁴ *E.g.*, BRIAN BARRY, *JUSTICE AS IMPARTIALITY* (1995); James Bohman, *Citizenship and Norms of Publicity: Wide Public Reason in Cosmopolitan Societies*, 27 *POL. THEORY* 176, 177–78 (1999).

⁵⁵ *See, e.g.*, David Stasavage, *Polarization and Publicity: Rethinking the Benefits of Deliberative Democracy*, 69 *J. POLITICS* 59 (2007) (arguing that public deliberation among legislators may produce substantively worse outcomes than private deliberation, and discussing the literature on this question).

⁵⁶ HANNAH ARENDT, *THE HUMAN CONDITION* 22 (1958).

⁵⁷ *Id.* at 176.

⁵⁸ *Id.* at 178.

⁵⁹ *Id.* at 179.

⁶⁰ *E.g.*, FISHKIN, *supra* note 26, at 4–5.

anonymity would seem to be at least disfavored. In Aristotelian rhetorical theory, for instance, “public deliberation is deliberation in the presence . . . of persons of flesh and blood.”⁶¹ As a result, shame plays an important and useful role in teaching citizens the art of deliberation, but the ability of people to be shamed seems to depend to some degree upon their identity being known to their interlocutors.⁶² On the other hand, to the extent that more contemporary theories place greater emphasis on the role of deliberation in facilitating broad democratic consensus and political legitimacy, the fact that individual interlocutors might or might not be personally known to one another may be less significant than their ability satisfactorily to advance the conversation.⁶³

The status of anonymity in liberal democratic theory likewise is not well established. Some liberal theorists, beginning from the Kantian proposition that self-awareness and self-knowledge are preconditions for the meaningful entry of the liberal self into society and politics, conclude that the self must be afforded some degree of privacy in order to “enabl[e] individuals to discover what is valuable or important to them in life”⁶⁴ and to “mark where individuals continue to maintain authority over themselves.”⁶⁵ In this private space, individuals are freed to develop without interference the essential democratic capacities of learning how “to resist social pressures to conform with dominant views and [developing] deliberative abilities allowing participation in deliberative processes.”⁶⁶ Or, as Ian Shapiro has succinctly remarked, “Rawls’s contractor reasons alone.”⁶⁷

However, it does not follow from the proposition that the liberal self requires privacy or isolation to develop its capacities or exercise its reason that it requires anonymity. Although they overlap, privacy and anonymity are not the same. It is possible to act with or in the presence of others to whom one is known, and therefore not anonymously, yet have those actions remain private in the sense that others will not learn of them. Conversely, it is possible to act in full public view of large numbers of people—without privacy, in other words—and yet to remain anonymous on account

⁶¹ Paul Nieuwenburg, *Learning to Deliberate: Aristotle on Truthfulness and Public Deliberation*, 32 POL. THEORY 449, 450 (2004).

⁶² *Id.* at 450 (“Aristotle stands at the fount of a tradition of political thinkers who connect publicity with . . . shame.”).

⁶³ Habermas denies the possibility of an organized public sphere. HABERMAS, *supra* note 25, at 367; *see also* YOUNG, *supra* note 25, at 169–70.

⁶⁴ Annabelle Lever, *Privacy Rights and Democracy: A Contradiction in Terms?*, 5 CONTEMP. POL. THEORY 142, 149 (2006).

⁶⁵ H. Tristram Engelhardt, Jr., *Privacy and Limited Democracy: The Moral Centrality of Persons*, 17 SOC. PHIL. & POL’Y 120, 124 (2000).

⁶⁶ Antoinette Rouvroy & Yves Poullet, *The Right to Informational Self-Determination and the Value of Self-Development: Reassessing the Importance of Privacy for Democracy*, in REINVENTING DATA PROTECTION? 45, 46 (Serge Gutwirth et al. eds., 2009) (citations omitted).

⁶⁷ IAN SHAPIRO, *THE MORAL FOUNDATIONS OF POLITICS* 112 (2003). Indeed, the Kantian citizen reasons not merely alone, but attempts to do so from a “point of view, which abstracts from all contingent features of oneself, such as social and institutional roles, self-regarding interests, and particular religious and ethnic identities.” Bohman, *supra* note 54, at 178.

of being unknown to them. Thus, the interests of privacy are not necessarily served by anonymity, or vice versa. A solitary walk on the beach or a private weekend in the country may afford the liberal citizen all the opportunity he or she needs to reason individually about his or her beliefs and values; whether the citizen does so anonymously seems largely irrelevant.

Perhaps the only, and certainly the best-known, political theorist who deals expressly with political anonymity is John Stuart Mill. In *Considerations on Representative Government*, Mill argues strenuously against the secret ballot, a reform that had recently been proposed in Britain.⁶⁸ According to Mill, the vote is a trust that each voter holds for the benefit of the public.⁶⁹ The vote, he contends,

is not a thing in which he [the citizen] has an option; it has no more to do with his personal wishes than the verdict of a jurymen. It is strictly a matter of duty; he is bound to give it according to his best and most conscientious opinion of the public good.⁷⁰

In order to provide voters with incentives to use the vote for the public rather than their own private good, “the duty of voting, like any other public duty, should be performed under the eye and criticism of the public” because “the bare fact of having to give an account of their conduct, is a powerful inducement to adhere to conduct of which at least some decent account can be given.”⁷¹

Thus, according to Mill—in an argument that prefigures the emphasis of modern theories of deliberative democracy on the giving of “public reasons”⁷²—publicity of voting will lead citizens to vote responsibly to avoid the embarrassment of having to give a public accounting of votes that cannot be adequately justified with legitimate reasons. Mill does allow that there may be times when the disadvantages of secret voting may be outweighed by the advantage of freeing voters from coercion, but, he believes, “in the more advanced states of modern Europe, and especially in this country [Britain], the power of coercing voters has declined and is declining.”⁷³ The possibility of coercion does not therefore count for Mill as a justification for secret balloting.

Mill’s argument, however, is speculative and indeed rests on contestable empirical premises. Is it really so clear that voters will feel shame if called upon to account for their votes? Will they really suffer embarrassment if forced to confess that they voted out of self-interest? Before whom will the voter actually stand embarrassed, and are those the same people whose approval the voter respects and craves? Is it even clear that “the public” will demand an account of votes cast, or will attend to it if one is

⁶⁸ MILL, *supra* note 10, at 353–55.

⁶⁹ *Id.* at 353.

⁷⁰ *Id.* at 354.

⁷¹ *Id.* at 355, 360.

⁷² RAWLS, *supra* note 30, at 131–33.

⁷³ MILL, *supra* note 10, at 356.

offered? Indeed, much of what might count as theoretical consideration of anonymity likely rests on similarly contingent and empirical assumptions. Will voters engaged in public deliberation feel more or less comfortable in advancing their own views sincerely when they are anonymous or when they are identified? Will they behave more or less public-regardingly if they are anonymous? It seems difficult to say *a priori*, which is perhaps why democratic theory devotes relatively little contemplation to anonymity understood as a particular and contingent ground-level practice.

Because the guidance offered by democratic theory is so limited, I now turn to empirical evidence concerning the effect of anonymity on behavior.

III. THE EFFECTS OF ANONYMITY ON POLITICAL BEHAVIOR: EMPIRICAL FINDINGS

Despite the many aspects of contemporary political life that either are now conducted under some kind of regime of anonymity or are subject to competing claims concerning whether they should be so conducted, very little empirical research has been undertaken into the actual effect of anonymity on specifically political behavior. In this section, I review briefly what little seems to be known about the effect of anonymity in politics, and then turn to other areas in which the effect of anonymity on behavior has been more thoroughly studied. Although these studies concern behavior in non-political spheres, they seem to provide at least some insight into how anonymity might affect the behavior of citizens acting self-consciously in the political arena, which in turn may allow us to draw at least some speculative conclusions about the tendency of anonymity to induce citizens to approach more or less closely to political ideals.

A. *The Effect of Anonymity in Politics*

The earliest and most far-reaching policy of anonymity to be applied to American politics was the introduction of the Australian (secret) ballot in the late nineteenth and early twentieth centuries.⁷⁴ The dominant nineteenth-century mode of voting required voters to arrive at the polling place, procure a privately printed party ballot from an agent of one of the contending political parties, step up to a voting window, and in public view hand over the ballot.⁷⁵ Because parties typically printed their ballots in different colors, observers could generally see for whom each person voted.⁷⁶ After introduction of the Australian system, voting took place secretly rather than in open view, and official ballots were printed not by parties, but by governments.⁷⁷

⁷⁴ Peter H. Argersinger, "A Place on the Ballot": *Fusion Politics and Antifusion Laws*, 85 AM. HIST. REV. 287, 290–91 (1980).

⁷⁵ RICHARD FRANKLIN BENSEL, *THE AMERICAN BALLOT BOX IN THE MID-NINETEENTH CENTURY* 30 (2004).

⁷⁶ Jerrold G. Rusk, *The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876–1908*, 64 AM. POL. SCI. REV. 1220, 1221 (1970).

⁷⁷ MICHAEL E. MCGERR, *THE DECLINE OF POPULAR POLITICS: THE AMERICAN NORTH, 1865–1928*, at 64 (1986); John D. Buenker, *Sovereign Individuals and Organic Networks: Political Cultures in Conflict During the Progressive Era*, 40 AM. Q. 187, 196 (1988).

The principal justification for introducing the secret ballot, a reform backed strongly by Progressives, was to break the control that parties were thought to exercise over voters by depriving them of the ability to enforce discipline at the polls.⁷⁸ Bribery and many other forms of coercion were employed frequently in nineteenth-century elections,⁷⁹ and party agents were keen to know that their investments in individual voters were repaid with votes. Thus, introduction of the secret ballot was intended primarily to enhance citizen independence and sincerity by freeing voters to vote their actual preferences rather than those of a party to which they felt beholden or that they feared.

Did the introduction of the secret ballot have this effect? Unfortunately, few conclusions can be drawn from the available data. The introduction of the secret ballot coincided with two developments in voting patterns: an increase in split-ticket voting and a decline in voter turnout.⁸⁰ The increase in split-ticket voting is consistent with the hypothesis that anonymity freed voters to vote sincerely and independently. However, because ballot secrecy was inevitably accompanied by changes to ballot format that facilitated split-ticket voting, which had previously been very difficult,⁸¹ it is unclear whether the rise in split-ticket voting is attributable to the privacy of the voting booth or to the new ballot layouts.⁸²

The decline in turnout also is difficult to interpret. It is possible that turnout declined because anonymity freed many voters to express their true preferences, which for many voters was that they preferred not to participate in electoral politics. Such voters presumably had previously been brought to the polls only or mainly as a result of party bribery or coercion. However, the introduction of the secret ballot occurred at a time in American history when politics, which had long been one of the principal forms of public entertainment, was eclipsed by other diversions such as vaudeville, amusement parks, theater, dance halls, circuses, baseball, boxing, bicycles, and eventually movies, phonographs, automobiles, and radio.⁸³ Historians generally credit

⁷⁸ See Rusk, *supra* note 76, at 1221.

⁷⁹ BENSEL, *supra* note 75, at 57; CAMPBELL, *supra* note 16.

⁸⁰ Walter Dean Burnham, *The Changing Shape of the American Political Universe*, 59 AM. POL. SCI. REV. 7, 13 (1965); Jac. C. Heckelman, *The Effect of the Secret Ballot on Voter Turnout Rates*, 82 PUB. CHOICE 107, 109–11 (1995); Rusk, *supra* note 76, at 1235.

⁸¹ Because ballots were printed by parties rather than the government, each ballot listed only the candidates for office fielded by the party that printed the ballot. MCGERR, *supra* note 77, at 64. It was theoretically possible for a voter to vote a split ticket by altering a preprinted party ballot or by creating his own ballot, but this was complicated by the great length of the nineteenth-century ballot, the frequent unavailability of information about candidates who were running lower on the ticket, the difficulty of altering a party ballot without being observed by potentially hostile party agents, and the prevailing nineteenth-century ethos of strict party loyalty. BENSEL, *supra* note 75, at 30–31 (discussing ballot size, lack of complete information, and party agent pressure at the polls).

⁸² Jack L. Walker, *Ballot Forms and Voter Fatigue: An Analysis of the Office Block and Party Column Ballots*, 10 MIDWEST J. POL. SCI. 448, 450 (1966).

⁸³ See ROBERT J. DINKIN, *CAMPAIGNING IN AMERICA: A HISTORY OF ELECTION PRACTICES* 96 (1989); MARK LAWRENCE KORNBLOH, *WHY AMERICA STOPPED VOTING: THE DECLINE OF*

declining turnout to these and other social forces rather than the secret ballot.⁸⁴ Moreover, some research suggests that the secret ballot did not eliminate party bribery and coercion but only channeled it in different directions: instead of paying voters to vote for their own candidates, parties paid likely supporters of opposing candidates to stay home.⁸⁵ If so, then little can be concluded about the impact of the secret ballot on voting tendencies.⁸⁶

Another significant policy affecting anonymity in political behavior is the introduction in the late twentieth century of effective mandatory disclosure of financial contributions to candidates and political organizations following enactment of the Federal Election Campaign Act (FECA) and analogous state-level regulatory requirements.⁸⁷ Prior to FECA, contributions in support of candidates could be made anonymously, but after FECA, all contributions to candidates and political committees over one hundred dollars⁸⁸ had to be disclosed to the Federal Election Commission.⁸⁹

The effect of this very wide-ranging change from anonymity to publicity on political behavior has never, so far as I know, been directly studied. Although there is no obvious evidence that publicity of contributions has deterred or altered the flow of money, the available raw data is difficult to interpret. For example, the total amount contributed to presidential candidates has increased tenfold since the introduction of disclosure requirements in 1976,⁹⁰ more than twice the rate of inflation over the same period.⁹¹ This might suggest the absence of a significant deterrent effect, but of course there is no way of knowing whether even more money would have been given were contributions permitted to be made anonymously. Certainly, recent agitation to learn the identity of big-money contributors to tax-exempt political advocacy organizations—along with sometimes aggressive criticism of any extension of disclosure requirements—suggests the existence of demand in at least some quarters for anonymity of

PARTICIPATORY DEMOCRACY AND THE EMERGENCE OF MODERN AMERICAN POLITICS 114 (2000); MCGERR, *supra* note 77, at 148; MICHAEL SCHUDSON, *THE GOOD CITIZEN: A HISTORY OF AMERICAN CIVIC LIFE* 177 (1998).

⁸⁴ See, e.g., KORNBLUH, *supra* note 83, at 114.

⁸⁵ Gary W. Cox & J. Morgan Kousser, *Turnout and Rural Corruption: New York as a Test Case*, 25 AM. J. POL. SCI. 646 (1981).

⁸⁶ Interestingly, a new study suggests that, contrary to the observed historical correlation, secret voting *increases* turnout compared to public voting. Christian R. Grose & Carrie A. Russell, *Avoiding the Vote: A Theory and Field Experiment of the Social Costs of Public Political Participation* (Dec. 3, 2008), <http://ssrn.com/abstract=1310868>.

⁸⁷ Earlier federal disclosure legislation existed, but was widely thought to be ineffective. See *Publicity of Political Contributions Act*, ch. 392, 36 Stat. 822 (1910); Melvin I. Urofsky, *Campaign Finance Reform Before 1971*, 1 ALB. GOV'T L. REV. 1, 18 (2008).

⁸⁸ This has since been raised to two hundred dollars. 2 U.S.C. § 434(b)(3)(A) (2006).

⁸⁹ *Buckley v. Valeo*, 424 U.S. 1, 62–64 (1976).

⁹⁰ *Presidential Fundraising and Spending, 1976–2008*, OPENSECRETS, <http://www.opensecrets.org/pres08/totals.php?cycle=> (last visited Apr. 10, 2011).

⁹¹ See U.S. DEPT. OF LAB., *CONSUMER PRICE INDEX: ALL URBAN CONSUMERS, U.S. CITY AVERAGE, ALL ITEMS* (2011), available at <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>.

political contributions,⁹² though again it is unclear whether the elimination of anonymity would induce any significant change in contribution patterns.

A third situation in which anonymity might conceivably affect political behavior is in the area of anonymous political speech, particularly speech that occurs online, as in political websites, blogs, and chatrooms. Much recent research documents the ways in which discourse in such fora can become polarized: participants in discussions, speaking mainly or exclusively to others who are self-selected to share similar points of view, become caught up in an opinion cascade in which the group talks itself into consensus positions that are more extreme than those with which most of the participants began.⁹³ These studies, however, have not focused specifically on the role of anonymity in political discourse; the primary observational or experimental variable tends to be the like-mindedness of the participants and the limitation of group contacts with those of other views. Thus, it is not clear from the experimental evidence what effect anonymity by itself has on the vulnerability of homogeneous discussion groups to polarizing cascades.

Given the paucity of targeted research on the effect of anonymity on political behavior, it may be worthwhile to examine research conducted to assess the effect of anonymity on behavior in other arenas. A brief review of a sampling of the large body of extant research results leads to some intriguing, if suggestive, hypotheses.

B. The Effect of Anonymity in Other Settings

The impact of anonymity on human behavior has been a frequent subject of study in many areas of research outside the formal political sphere. These include the effect of anonymity on how people answer survey questions, contribute to collaborative online working groups, react to frustration while driving, make ethical decisions, evaluate guilt and innocence, and mete out punishment, to name just a few. What this research tends repeatedly to show is that the effect of anonymity on behavior is highly variable and context-dependent. Anonymity tends to reduce inhibitions, but the kind of behavior that results from reduced inhibition depends on a host of contextual factors: the predispositions of the individual in question, the norms of groups to which the individual belongs that are made salient by the specific behavior in question, the nature of the decision to be made, the immediate context in which it is made, and so on. What follows is a very brief and selective review of some of the available research on anonymity.

⁹² See, e.g., Griff Palmer, *Decision Could Allow Anonymous Political Contributions by Businesses*, N.Y. TIMES, Feb. 28, 2010, at A25 (discussing corporations' desire to donate to political campaigns anonymously via non profit groups).

⁹³ CASS SUNSTEIN, REPUBLIC.COM 51–88 (2001); Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L. J. 71, 85 (2000).

Gathering facts and opinions is an important aspect of many enterprises, and it has often been hypothesized that granting anonymity to those from whom information is sought would produce more accurate data by freeing respondents to answer more sincerely.⁹⁴ A very substantial body of research has failed, however, to find such an effect. In controlled experiments that divided subjects into anonymous and identified groups, no difference in substantive responses was found when researchers posed questions about unionization to teachers;⁹⁵ about drug use and attitudes to middle school students;⁹⁶ about their professors' teaching to college students;⁹⁷ about dangerous behavior to at-risk youths in a social service program;⁹⁸ or about business ethics to marketing professionals,⁹⁹ as well as in many other settings.¹⁰⁰ Thus, anonymity by itself does not appear to increase independence and sincerity in the contexts evaluated.¹⁰¹

⁹⁴ See, e.g., Janet H. Malvin & Joel M. Moskowitz, *Anonymous Versus Identifiable Self-Reports of Adolescent Drug Attitudes, Intentions, and Use*, 47 PUB. OPINION Q. 557, 557–58 (1983) (“Questionnaires that are responded to anonymously . . . are often used because they are considered the least likely to be biased.”).

⁹⁵ Richard C. Wildman, *Effects of Anonymity and Social Setting on Survey Responses*, 41 PUB. OPINION Q. 74 (1977).

⁹⁶ Malvin & Moskowitz, *supra* note 94.

⁹⁷ Christopher Orpen, *The Susceptibility of Student Evaluation of Lecturers to Situational Variables*, 9 HIGHER EDUC. 293 (1980).

⁹⁸ Frederic G. Reamer, *Protecting Research Subjects and Unintended Consequences: The Effect of Guarantees of Confidentiality*, 43 PUB. OPINION Q. 497 (1979).

⁹⁹ Ishmael P. Akaah, *The Influence of Non-Anonymity Deriving from Feedback of Research Results on Marketing Professionals' Research Ethics Judgements*, 9 J. BUS. ETHICS 949 (1990).

¹⁰⁰ See, e.g., Carol Fuller, *Effect of Anonymity on Return Rate and Response Bias in a Mail Survey*, 59 J. APPLIED PSYCHOL. 292 (1974); Leonard I. Pearlin, *The Appeals of Anonymity in Questionnaire Response*, 25 PUB. OPINION Q. 640 (1961).

¹⁰¹ A growing body of research does, however, demonstrate that the medium in which survey questions are put to subjects can influence the content of their answers. For example, some studies find that respondents answer questions more accurately when those questions are propounded over the internet than when they are propounded using telephone interviews or interactive voice recognition technology. See Frauke Kreuter et al., *Social Desirability Bias in CATI, IVR, and Web Surveys: The Effects of Mode and Question Sensitivity*, 72 PUB. OPINION Q. 847, 847 (2008); LinChiat Chang & Jon A. Krosnick, *National Surveys via RDD Telephone Interviewing Versus the Internet: Comparing Sample Representativeness and Response Quality*, 73 PUB. OPINION Q. 641 (2009). However, these studies have not attempted to isolate the effect of anonymity by comparing anonymous versus identified treatment groups, so their significance to the body of work under discussion is unclear. Certainly, the different media utilized in these studies can, under the right circumstances, provide different degrees of partial anonymity, and in some circumstances might provide complete anonymity to respondents, and they therefore suggest that studies of this type focused more directly on anonymity might provide illuminating results. At the moment, though, I do not believe they can be taken to contradict the studies mentioned immediately above in the main discussion.

In contrast, anonymity has sometimes—but not always—been found to increase antisocial behavior—in the conceptual language of democratic theory, to decrease public-mindedness. In a classic experiment, anonymity was found to increase the incidence among children of stealing Halloween candy.¹⁰² In another, experimental subjects were asked to deliver shocks to confederates of different races. Subjects delivered more severe shocks to black than white targets when they were anonymous than when they were identifiable.¹⁰³ However, in another well-known experiment where subjects were invited to behave aggressively toward volunteers by throwing or striking them with foam objects, anonymity had no relation to the level of aggressive behavior.¹⁰⁴ In experiments conducted under both field and laboratory conditions, anonymity increased aggressive driving behavior such as horn-honking and, in lab conditions using simulators, speeding, running red lights, and crashing.¹⁰⁵ In the latter study, however, the researcher concluded that not only the experimental context but also “situational and dispositional factors are strong predictors of aggressi[veness]”¹⁰⁶—i.e., that anonymity interacts with other factors in complex ways.

In an experimental setting, anonymous juries were more likely than identifiable juries to convict when the evidence against the defendant was strong, and to view the process as fair.¹⁰⁷ Anonymous juries also imposed the harshest penalty more frequently than identified juries, although they did not impose harsher penalties across the board.¹⁰⁸ In a different but common kind of experimental setting, subjects were asked to play the “dictator game,” in which they had complete and unilateral authority to decide how to divide some benefit, such as money, between themselves and another subject, anonymity was found to increase selfish resolutions of the game.¹⁰⁹ As the author of one study observed, “the effects of anonymity are quite variable; sometimes anonymity has been shown to increase transgressions, sometimes it has been shown to decrease them, and other times anonymity has been found to interact in unpredictable ways with other variables.”¹¹⁰

¹⁰² Edward Diener et al., *Effects of Deindividuation Variables on Stealing Among Halloween Trick-or-Treaters*, 33 J. PERSONALITY & SOC. PSYCHOL. 178 (1976).

¹⁰³ Edward Donnerstein et al., *Variables in Interracial Aggression: Anonymity, Expected Retaliation, and a Riot*, 22 J. PERSONALITY & SOC. PSYCHOL. 236 (1972).

¹⁰⁴ Edward Diener, *Effects of Prior Destructive Behavior, Anonymity, and Group Presence on Deindividuation and Aggression*, 33 J. PERSONALITY & SOC. PSYCHOL. 497 (1976).

¹⁰⁵ Patricia A. Ellison et al., *Anonymity and Aggressive Driving Behavior: A Field Study*, 10 J. SOC. BEHAV. & PERSONALITY 265 (1995); Patricia Ellison-Potter et al., *The Effects of Trait Driving Anger, Anonymity, and Aggressive Stimuli on Aggressive Driving Behavior*, 31 J. APPLIED SOC. PSYCHOL. 431 (2001).

¹⁰⁶ Ellison-Potter et al., *supra* note 105, at 432.

¹⁰⁷ D. Lynn Hazelwood & John C. Brigham, *The Effects of Juror Anonymity on Jury Verdicts*, 22 LAW & HUM. BEHAV. 695, 703–04 (1998).

¹⁰⁸ *Id.* at 706.

¹⁰⁹ Terence C. Burnham, *Engineering Altruism: A Theoretical and Experimental Investigation of Anonymity and Gift Giving*, 50 J. ECON. BEHAV. & ORG. 133 (2003).

¹¹⁰ Hazelwood & Brigham, *supra* note 107, at 698.

The capacity of computers to permit people to work collaboratively on the same project from different locations has sparked a considerable amount of research into the influence of anonymity on behavior online.¹¹¹ The results have generally been variable and complex. For example, in one study anonymous online participants disclosed significantly more personal information about themselves—generally thought to be a prosocial behavior—in an experimental setting where they were asked to collaborate in finding a solution to an ethical dilemma.¹¹² In another study, anonymity increased the number of comments participants made, the degree to which those comments were critical or probing, and the frequency with which participants embellished ideas advanced by others, supporting the hypothesis that online anonymity generates a kind of mutual criticism that is prosocial and constructive.¹¹³ Yet another study found that anonymity in collaborative online work did not affect overall group effectiveness, but was associated with slower performance, and members of anonymous groups were less satisfied with the experience.¹¹⁴ Another experiment found that anonymity increased the susceptibility of individual group members to group norm priming, and that it facilitated social transmission of norms within the group¹¹⁵—i.e., supported the proposition that anonymity has the capacity to increase conformity with social norms.

These and many other studies seem to reveal that the precise effect of anonymity in any particular situation is uncertain. For example, theorists often treat anonymity as disinhibiting.¹¹⁶ Yet how disinhibition affects behavior in any given set of circumstances depends upon both the predispositions of the actor and the kinds of social inhibitions that publicity would otherwise invoke. If anonymity is disinhibiting, then it may facilitate antisocial behavior if the individual is predisposed to such behavior and the social pressures to which he or she ordinarily is publicly exposed are prosocial, but anonymity can also facilitate the opposite kind of behavior if these considerations are reversed.¹¹⁷ According to one particularly sophisticated model of social behavior, the effect of anonymity depends heavily on the context. Anonymity, under this view, “serves to strengthen the impact of social norms” in times “when a social identity is salient,” but “when a *personal* identity is salient, the same anonymity will reduce

¹¹¹ *Id.* at 188.

¹¹² See, e.g., Adam N. Joinson, *Self-Disclosure in Computer-Mediated Communication: The Role of Self-Awareness and Visual Anonymity*, 31 EUR. J. SOC. PSYCHOL. 177 (2001).

¹¹³ Leonard M. Jessup et al., *The Effects of Anonymity on GDSS Group Process with an Idea-Generating Task*, 14 MIS Q. 313 (1990); see also Terry Connolly et al., *Effects of Anonymity and Evaluative Tone on Idea Generation in Computer-Mediated Groups*, 36 MGMT. SCI. 689 (1990).

¹¹⁴ Boris B. Baltes et al., *Computer-Mediated Communication and Group Decision Making: A Meta-Analysis*, 87 ORG. BEHAV. & HUM. DECISION PROCESSES 156 (2002).

¹¹⁵ Tom Postmes et al., *Social Influence in Computer-Mediated Communication: The Effects of Anonymity on Group Behavior*, 27 PERSONALITY & SOC. PSYCHOL. BULL. 1243 (2001).

¹¹⁶ John Suler, *The Online Disinhibition Effect*, 7 CYBERPSYCHOL. & BEHAV. 321 (2004).

¹¹⁷ Connolly et al., *supra* note 113; Joseph S. Valacich et al., *A Conceptual Framework of Anonymity in Group Support Systems*, 1 GROUP DECISION & NEGOTIATION 219 (1992).

the impact of social norms, and increase the person's adherence to their [sic] own personal standards¹¹⁸ regardless of whether those personal standards are pro- or antisocial.¹¹⁹ In other words, "relevant norms must be salient in order to elicit the proper norm-congruent behavior,"¹²⁰ but salience is a property that is almost entirely contingent and context-dependent. As one scholar has perceptively noted:

The concept of disinhibition can lead us astray, into thinking that what is disinhibited is a more "true" aspect of identity than [those aspects that undergo] the processes of inhibiting and disinhibiting. . . . The self does not exist separate from the environment in which that self is expressed. . . . In fact, a single disinhibited [self] probably does not exist at all, but rather a collection of slightly different constellations of affect, memory, and thought that surface in and interact with different types of . . . environments.¹²¹

In sum, then, whether and how anonymity affects behavior in any significant way seems to depend very much on particularities of context. Anonymity, in other words, is socially mediated, and as variable as the myriad social contexts in which it might be found.

C. Relevance to the Political Setting

The conclusion to which these results point is that the impact of anonymity on any particular kind of behavior is extremely difficult to predict, and that it will very likely differ depending on the circumstances. Of course, the relevance of these findings to political behavior is unclear; politics might simply be another context in which otherwise comparable behavior occurs, or it might not. Assuming, however, that these findings are in principle relevant, then the effect of anonymity in the political arena seemingly cannot be predicted with any degree of certainty. Whether anonymity in political speech, financial contributions, petition signing, communication with officials, or any other activity will enhance or undermine the sincerity, independence, and public-mindedness with which citizens behave is likely to depend on numerous contextual factors. A more modest and defensible conclusion is that anonymity will have such an effect for some people in some circumstances but not for others.

¹¹⁸ Joinson, *supra* note 112, at 179 (emphasis added).

¹¹⁹ Martin Lea et al., *Knowing Me, Knowing You: Anonymity Effects on Social Identity Processes within Groups*, 27 PERSONALITY & SOC. PSYCHOL. BULL. 526, 527 (2001); Kai Sassenberg & Tom Postmes, *Cognitive and Strategic Processes in Small Groups: Effects of Anonymity of the Self and Anonymity of the Group on Social Influence*, 41 BRITISH J. SOC. PSYCHOL. 463 (2002).

¹²⁰ Robert B. Cialdini & Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 ANN. REV. PSYCHOL. 591, 597 (2004).

¹²¹ Suler, *supra* note 116, at 325.

If so, this should not be terribly surprising. Experience suggests that anonymity sometimes seems to free people to behave more consistently with their better selves, and at other times seems to free them to behave in ways that are irresponsible and anti-social. For example, the same circumstances of anonymous online communication may cause some people to lose socially useful inhibitions that restrain them from uncivil discourse, whereas others may lose socially harmful inhibitions that restrain them from effective dating and courtship. If politics is just another behavioral context, then there is no good reason to suppose that the results would be any different in that arena.

IV. ANONYMITY IN ITS CONTEMPORARY POLITICAL CONTEXT

If the effects of anonymity are indeed context-dependent, then whether opportunities for anonymity in contemporary political life might induce citizens to exhibit the political virtues of sincerity, independence, and public-mindedness cannot be predicted with any confidence. Nevertheless, we do know a fair amount about the context in which contemporary political behavior takes place. Consequently, although we cannot without considerably more research do much more than speculate, we may be able at least to inform our speculation by considering what we know about the actual context in which political behavior occurs. Below is a brief and decidedly non-exclusive list of contextual factors that might be relevant to the degree to which anonymity might facilitate or impede citizens in comporting themselves consistently with the ideals of democratic theory.

1. *Hard coercion.* The single most important reason why citizens might wish to act anonymously in politics is probably to avoid official retaliation by the state for the expression or advancement of dissenting views. The threat of such coercion would presumably raise a considerable obstacle to the sincere expression by citizens of their political opinions. Although this is without doubt a significant factor influencing political behavior in many parts of the world today, it seems to be virtually nonexistent in the contemporary United States; state coercion of votes, financial contributions, or political speech is exceedingly rare, and seems to be confined mainly to infrequent conflicts in which government employees are pressured to support incumbent office holders.¹²²

Of course, the state is not the only entity capable of exerting enough power on voters to coerce their behavior. It was, after all, fear of private coercion by political

¹²² The frequency and seriousness of pressure placed on low-level government employees to participate in partisan politics prompted such landmark pieces of legislation as the Pendleton Act of 1883, ch. 27, 22 Stat. 403, §§ 11–14, and the Hatch Act, ch. 410, 53 Stat. 1147 (1939), both of which severely limited the ability of federal employees to engage in political activity. Even after these and similar reforms changed the default order to one in which elected officials and their high-level appointees may not pressure ordinary government employees to work for the incumbent's reelection, breaches of this norm still occur. *See, e.g.,* James Heaney, *City Hall E-mails Urge Staff to Assist Brown Campaign*, BUFFALO NEWS, (Aug 21, 2010, 12: 24 AM), <http://www.buffalonews.com/incoming/article1461.ece>.

parties that induced adoption of the secret ballot in the first place.¹²³ Private violence directed against voters, or the threat of it, was a factor in American electoral politics during the late eighteenth and early nineteenth centuries, and for decades Jim Crow institutionalized a public-private alliance of violence directed against black citizens.¹²⁴ Nevertheless, hard private coercion—the credible threat of retaliation by force or other similarly effective means—seems to be at historic lows in the United States.¹²⁵ To be sure, there have recently been a small number of well-publicized incidents in which threats of private retaliation were issued against citizens who had made financial contributions to certain causes,¹²⁶ and the effect of even a few such threats may be sufficiently magnified by publicity to gain the attention of a much larger number of voters. Still, it seems unlikely that threats of public or private retaliation are sufficiently frequent or sufficiently credible to serve as the proximate cause of any diminution in citizens' willingness to participate in politics sincerely.¹²⁷

2. *Pluralism.* In contrast, one of the most important features of American political life for purposes of evaluating the impact of anonymity on political behavior surely is its pluralism.¹²⁸ Americans frequently hold a variety of substantive views on the merits of political issues. Often these views are informed by self-interest, and citizens may vary considerably in the degree to which they have a stake in or understand their self-interest to be affected by various policies and politically salient disputes.

More importantly for present purposes, however, Americans also seem to hold a wide variety of views concerning the behavioral norms appropriate to participation in politics.¹²⁹ Some are predisposed to believe that politics is a forum for advancing the common good. Others seem predisposed to view politics as a vehicle for advancing their own self-interest, economic or otherwise. Some seem to understand politics as a forum for honest deliberation and sincere persuasion. Others seem to view politics as an arena for the exercise of power. Some find consensus important; others prefer raw majoritarian domination. Some value civility, others pugnacious struggle. Some

¹²³ See Michael Waterstone, *Civil Rights and the Administration of Elections—Toward Secret Ballots and Polling Place Access*, 8 J. GENDER RACE & JUST. 101, 106–07 (2004).

¹²⁴ See Gilda R. Daniels, *Voter Deception*, 43 IND. L. REV. 343, 346–47 (2010).

¹²⁵ See Mayer, *supra* note 7, at 20 (discussing the lack of information available on modern retaliation following disclosures of financial support).

¹²⁶ Many of these relate to incidents surrounding California's recent experience with Proposition 8, a measure that limited the legal definition of marriage to opposite-sex unions. See Scott M. Noveck, *Campaign Finance Disclosure and the Legislative Process*, 47 HARV. J. LEGIS. 75, 98–99 (2010).

¹²⁷ Mayer, after a thorough review of the anecdotal evidence, concludes that “neither the extent of that perceived risk nor the strength of its effect on behavior is known.” Mayer, *supra* note 7, at 27.

¹²⁸ See Maimon Schwarzschild, *Popular Initiatives and American Federalism, or, Putting Direct Democracy in its Place*, 13 J. CONTEMP. LEGAL ISSUES 531, 537–53 (2004) (discussing “value pluralism” in relation to democracy).

¹²⁹ See Nathan Teske, *Beyond Altruism: Identity-Construction as Moral Motive in Political Explanations*, 18 POL. PSYCHOL. 71, 72–73 (1997).

value the approval of their acquaintances or social group while some are indifferent to the disapproval of others. All, moreover, live within social networks that may profess a wide variety of normative and behavioral commitments, and the degree to which the norms and practices of these groups serve as behavioral guides may vary dramatically from individual to individual.

More than any other variable, this pluralism in baseline behavioral norms may heighten the relevance of microcontexts to the way in which anonymity affects citizens' political behavior, thereby creating the conditions for considerable variability of results. Citizens who are personally predisposed to act public-regardingly, for example, or who belong to groups that are committed to public-regarding norms of political behavior, may continue to act in public-regarding ways even when their words or actions are cloaked by anonymity. Citizens who are personally predisposed to act in private-regarding ways, on the other hand, might behave differently when anonymous depending upon the norms of the social groups that influence their behavior when it is public. Private-regarding citizens who inhabit social networks that embrace private-regarding norms may continue to behave private-regardingly when anonymous. On the other hand, citizens predisposed to act private-regardingly but whose predispositions are normally modulated by social network norms of public-mindedness might be more likely to indulge their private-minded impulses when their actions may be taken anonymously.

The same might be said of the effect of anonymity on sincerity and independence: those predisposed to exhibit these traits might do so even when they speak or act anonymously, whereas those whose predispositions run the other way might in some circumstances alter their behavior when conditions permit them a measure of anonymity.

3. *Soft "coercion."* A related contextual factor is the apparent ubiquity of what I will call "soft coercion." Unlike hard coercion, which alters behavior through violence, bribery, threats, and other forms of external compulsion, soft coercion modifies behavior through the routine operation of ordinary social forces.¹³⁰ Notwithstanding the standard liberal premise of individual autonomy, actual human beings live in social groups, these social groups embrace certain norms of belief and behavior, and failure by a member of the group to conform to those norms consequently has "social repercussions"¹³¹ for how that individual continues to live within the group. Decades of social psychology research has shown the power of groups to demand and enforce conformity with group norms.¹³² More recently, political scientists marching under the banner of social network theory have thoroughly documented the power of social groups to enforce conformity even in the sphere of politics, in contrast to the premises

¹³⁰ See Isaak Dore & Michael T. Carper, *Multiculturalism, Pluralism, and Pragmatism: Political Gridlock or Philosophical Impasse?*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 71, 79–80 (2002).

¹³¹ ELIHU KATZ & PAUL F. LAZARSFELD, PERSONAL INFLUENCE: THE PART PLAYED BY PEOPLE IN THE FLOW OF MASS COMMUNICATIONS 66 (1955).

¹³² Cialdini & Goldstein, *supra* note 120.

of much democratic theory, which regards democratic processes as intrinsically a sphere of individual autonomy:

Democratic elections include a substantial element of social coercion. Electoral campaigns turn citizens' attention toward politics, and deviant preferences are brought into correspondence with their political surroundings. The election campaign serves as a political stimulus setting into motion a social influence process, and this in turn imposes social order on the political chaos of individually held, idiosyncratic opinions.¹³³

Under these circumstances, "disagreement is always on the verge of being eliminated, and the only individuals who are equipped to take on the full role of a participatory citizen are those imbedded within cozy cocoons of like-minded associates."¹³⁴

The coercive power of these social forces has obvious implications for assessing the impact of anonymity on political behavior. On one hand, group norms will likely exercise significant influence over the political behavior of group members. On the other hand, norms of political behavior may differ considerably from group to group. As a result, it is likely to be very difficult to predict how anonymity will affect any individual's behavior without knowing a good deal on the ground about the groups to which the person belongs and where those groups stand on the democratic norms of sincerity and public-mindedness (we may apparently on this view discard independence as completely unrealistic).

4. *Framing and priming.* Another apparently ubiquitous aspect of political behavior is the impact of framing and priming effects. Facts and issues do not carry intrinsic moral or political content; such evaluations must be supplied by the voter through a process of interpretation.¹³⁵ Framing refers to the presentation of facts and issues in such a way as to influence citizens to reach one interpretation rather than another.¹³⁶ It generally involves weaving facts into an easily understood narrative

¹³³ ROBERT HUCKFELDT & JOHN SPRAGUE, *CITIZENS, POLITICS, AND SOCIAL COMMUNICATION: INFORMATION AND INFLUENCE IN AN ELECTION CAMPAIGN* 96 (1995).

¹³⁴ ROBERT HUCKFELDT ET AL., *POLITICAL DISAGREEMENT: THE SURVIVAL OF DIVERSE OPINIONS WITHIN COMMUNICATION NETWORKS* 6 (2004); *see also* DIANA C. MUTZ, *HEARING THE OTHER SIDE: DELIBERATIVE VERSUS PARTICIPATORY DEMOCRACY* 3 (2006) ("Those with diverse networks refrain from participation in part because of the social awkwardness that accompanies publicly taking a stand that friends or associates may oppose. . . . [I]t is doubtful that an extremely activist political culture can also be a heavily deliberative one. The best social environment for cultivating political activism is one in which people are surrounded by those who agree with them. . . .").

¹³⁵ *See, e.g.*, Dennis Chong & James N. Druckman, *Framing Theory*, 10 *ANN. REV. POL. SCI.* 103, 106 (2007).

¹³⁶ Dennis Chong, *Creating Common Frames of Reference on Political Issues*, in *POLITICAL PERSUASION AND ATTITUDE CHANGE* 195, 200–01 (Diana C. Mutz et al. eds., 1996); Chong & Druckman, *supra* note 135, at 104.

that increases the likelihood that individuals will reach one evaluation of the facts rather than another.

Priming also influences the process by which citizens reach evaluative judgments, but it does so by exploiting the fact that individuals generally decide what they think about a topic not by drawing reflectively on everything they know, but by drawing selectively and reflexively on whatever information or associations tend to be most immediately and readily accessible.¹³⁷ Because people may be invited to make political judgments in many different circumstances, the information and associations most likely to come readily to mind may differ from circumstance to circumstance, from which it follows that the substantive judgments people make on the same topic may differ as well, depending upon the precise conditions in which they happen to render the judgment. As a result, researchers have found, influencing the circumstances in which political judgments are made—as by selectively directing a voter’s attention to some matters rather than others in televised political ads—can influence the judgments that voters make on the merits of political issues or candidates.¹³⁸

Like the dynamics of social conformity, framing and priming effects seem likely to have a potentially significant—and highly contingent—role in determining how anonymity influences political behavior in any given circumstance. Anonymity is itself a practice that has framing and priming effects.¹³⁹ Anonymity frames issues by erecting a barrier between individuals and the objects of their attention; it invites the anonymous to think of themselves as distinct from others whom their behavior might affect.¹⁴⁰ At the same time, individuals offered the cloak of anonymity may be primed to think about themselves in isolation, which could induce them to focus more on their own independent beliefs and behavioral predispositions rather than on social expectations. However, the influence of anonymity’s framing and priming effects on behavior in individual cases is uncertain because it depends so heavily on the individual’s predispositions. Suppose anonymity primes people to focus more closely than does publicity on their own privately held beliefs. Whether in those circumstances they behave with greater or lesser public spirit depends entirely on their basic predispositions, which are variable, shaped by a lifetime of social influences, and may vary from context to context.¹⁴¹

¹³⁷ SHANTO IYENGAR & DONALD R. KINDER, NEWS THAT MATTERS: TELEVISION AND AMERICAN OPINION 4, 65 (1987).

¹³⁸ Chong & Druckman, *supra* note 135, at 114–15.

¹³⁹ Burnham, *supra* note 80, at 134.

¹⁴⁰ Social psychologists even have a name for this phenomenon—“deindividuation”—which has sometimes been thought to be a condition that facilitates antisocial behavior such as that exhibited by mobs. A classic account of deindividuation is L. Festinger et al., *Some Consequences of De-individuation in a Group*, 47 J. ABNORMAL & SOC. PSYCHOL. 382 (1952).

¹⁴¹ *E.g.*, Jonah Berger et al., *Contextual Priming: Where People Vote Affects How They Vote*, 105 PROC. NAT’L ACAD. SCI. 8846 (2008).

5. *The low salience of politics.* “The typical American voter,” according to a well-known study, “knows little about politics, is not interested in politics, does not participate in politics, does not organize his or her political attitudes in a coherent manner, and does not think in structured, ideological terms.”¹⁴² Another recent study concludes:

The last thing people want is to be more involved in political decision making: They do not want to make political decisions themselves; they do not want to provide much input to those who are assigned to make these decisions; and they would rather not know all the details of the decision-making process. Most people have strong feelings on few if any of the issues the government needs to address and would much prefer to spend their time in nonpolitical pursuits.¹⁴³

Politics, in other words, simply is not that important an activity to many or even most Americans.

The generally low salience of politics has potential implications for the effect of anonymity on citizens’ political behavior. Because the behavioral effect of anonymity appears to be so highly context-dependent, in any given situation the precise mix of personal and social norms and preferences may have considerable influence over how an anonymous individual behaves.¹⁴⁴ But because “norms must be salient in order to elicit . . . norm-congruent behavior,”¹⁴⁵ the low salience of politics for American citizens means that prevailing social norms of overtly political behavior might paradoxically play a rather limited role in guiding much behavior that is in fact political.

As Lea, Spears, and de Groot have explained, “[a] person’s behavior in any situation can be placed along a continuum ranging from entirely personal (conforming to personal standards) to entirely group-based (conforming to salient group norms and standards).”¹⁴⁶ If group political norms are not highly salient for individuals when they are acting politically (voting, speaking, signing petitions, contributing, etc.), then their behavior will likely respond more readily to their personally held behavioral norms.¹⁴⁷ Knowing this, of course, does not permit any conclusions to be drawn about how anonymity will affect behavior because we must first know something about individuals’

¹⁴² ERIC R.A.N. SMITH, *THE UNCHANGING AMERICAN VOTER* 1–2 (1989).

¹⁴³ JOHN R. HIBBING & ELIZABETH THEISS-MORSE, *STEALTH DEMOCRACY: AMERICANS’ BELIEFS ABOUT HOW GOVERNMENT SHOULD WORK* 1–2 (2002).

¹⁴⁴ This is especially true under the “balance of forces” model proposed by Connolly et al.: “[T]he effectiveness of an idea-generating group is determined by a somewhat subtle balance between facilitative and inhibiting forces, and . . . the balance of these forces can be shifted by manipulation of . . . member anonymity.” Connolly et al., *supra* note 113, at 692.

¹⁴⁵ Cialdini & Goldstein, *supra* note 120, at 597.

¹⁴⁶ Lea et al., *supra* note 119, at 527.

¹⁴⁷ *Id.*

personal behavioral norms. But the low salience of political norms does suggest the possibility that anonymity in politics could in general have the effect of driving many people to behave more nearly in conformity with their personal, internal predispositions than in conformity with collective norms of good political behavior. What this means at a collective level depends of course upon the distribution among the population of those whose norms of personal behavior coincide with or diverge from public norms of political behavior. But, however these qualities are distributed, it seems to follow that people who have not internalized behavioral norms of sincerity, independence, or public-mindedness would be more likely to act insincerely, irresponsibly, or selfishly when anonymous than when publicly identifiable.

CONCLUSIONS

Whether and to what extent political actions may be performed in anonymity is a policy choice. My purpose here has been to take a small, initial step toward identifying a framework for thinking about how we might evaluate alternative policies favoring anonymity or publicity in various domains of political life. I have argued that the desirability of such policies may be assessed according to the extent to which they succeed or fail in inducing citizens to behave in ways that are closer to rather than farther from the consensus norms of ideal democratic behavior, and in particular the norms of sincerity, independence, and public-mindedness.

Determining in advance the influence that any particular policy of anonymity will have on citizen behavior, however, turns out to be difficult and uncertain. The effect of anonymity on behavior is highly variable and context-dependent. Whether anonymity will encourage ideal citizen behavior depends on many factors: the individual's predispositions and beliefs, the behavioral norms of social groups to which the individual belongs, the salience in any immediate context of personal and group norms, the specific issues in play for the individual, priming and framing effects, and so forth. As a result, it cannot simply be assumed that anonymity has an equally prosocial or antisocial influence on the behavior of every person, in every circumstance, or for the same reasons; each domain of democratic behavior takes place in a context that may differ, perhaps significantly, from the context characterizing other such domains.

Although more research is needed to say much with any certainty, it does seem possible to advance one premise with perhaps some degree of assurance. If we make the seemingly innocuous assumption that in a plural society such as ours the behavioral norms of individuals and groups differ along the dimensions relevant to ideal citizen behavior, then it seems to follow that policies of anonymity will have little impact on the behavior of a potentially large number of people, particularly those who fall at either end of the scale. Someone predisposed by character to political sincerity, independence, and public-regardingness, whose social network supports those values, who is primed before undertaking an activity to act sincerely and public-regardingly,

and who faces no serious environmental fears associated with participation will likely act ideally regardless of whether the activity is done anonymously or publicly. By the same token, someone whose personal predispositions, group norms, and other influences consistently favor insincerity or private-regardingness will also behave consistently with those influences whether the action in question is anonymous or public.¹⁴⁸

The impact of anonymity policies, then, is likely to be felt mainly in the middle, among individuals who either are only weakly committed to personal or group norms of behavior or who are subject to conflicting influences. Thus, the efficacy of anonymity policies probably depends in large part on the proportion of people who fall into this middle range, something that only additional research is likely to disclose.

¹⁴⁸ To similar effect see Daniel Sturgis, *Is Voting a Private Matter?*, 36 J. SOC. PHIL. 18, 27 (2005).