Privacy Is Dead  
Affirmative Case by Joel Erickson



Most LD cases negotiate a delicate balance between the two ideals in the resolution, affirming the worth of both while positing the superiority of one. Dispensing with that convention, this case constitutes an unexpectedly uninhibited assault on privacy.

The first contention, which establishes the holistic worthlessness of privacy, relies upon three supporting warrants: First, privacy’s status within the venerated American constitutional system is far more dubious than most people expect. At best, privacy is notably absent. At worst, it channels negative connotations of judicial activism. Second, privacy cannot be stylized as a right due to its unfeasibility in developing countries. Third, privacy is an illusion in our current technology-saturated epoch. These arguments undermine the worth of privacy, facilitating the success of your second contention. Once you demonstrate that privacy is worthless, you can easily contrast with the relative worth of truth-seeking: If X is worth 0 units, and Y is worth 0.0000001 units, Y still is more valuable than X. Fortunately, in this case, truth-seeking is worth far more than privacy, which renders the comparison seamless.

The value framework of pragmatism is intended to focus the round on your diverse attacks on privacy. Win the value through the reasons to prefer, demonstrating that pragmatism either encompasses all results-oriented values and excludes all theoretical ones.

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# Definitions

* **Criminal Procedure**: “Criminal procedure deals with the set of rules governing the series of proceedings through which the government enforces substantive criminal law.”[[1]](#footnote-1)
* **Privacy**: Freedom “from secret surveillance and to determine whether, when, how, and to whom, one's personal or organizational information is to be revealed.”[[2]](#footnote-2)

# Value: Pragmatism

Having provided an interpretive grid for you to understand the key ideas in the resolution, I propose that you analyze the arguments in today’s round through the overarching framework of pragmatism, which Oxford defines as “an approach that evaluates theories or beliefs in terms of the success of their practical application.”[[3]](#footnote-3)

## Value Link 1: Praxis Supersedes Theory

Ideological success hinges on implementation. The quintessential example is communist governance. In theory? A utopian ideal where wealth abounds, and the government satiates the basic needs of all its citizens. In practice? An abysmal, cataclysmic failure that bankrupted a thriving economy and left its population destitute. We must evaluate principles for criminal procedure through the lens of their real-world viability, else our ivory tower ideals be shattered on the rocks of reality.

## Value Link 2: Subsumes Other Values

If my opponent’s value incorporates real world consequences, then it presupposes pragmatism. Hence, you should prefer pragmatism because it imbues my opponent’s value with worth. If my opponent’s value is entirely theoretical, we ought to reject it anyway as a corollary of my first reason to prefer. Either way, you value pragmatism as the standard.

# Criterion: Feasibility

To codify my value, I offer the criterion of feasibility, which simply asks the question of whether or not something is attainable. If something is irrelevant within or unachievable due to our contemporary societal structures, we should not value it. Attempting to actualize the impossible squanders valuable resources with no tangible benefit.

## Criterion Link: Manifestation of Pragmatism

Pragmatism asks us to weigh practical consequences. Feasibility is foundational to this calculus. If we cannot achieve something, it cannot accrue positive repercussions.

Ultimately, you’re asking the question: Will truth-seeking or individual privacy be most effective for criminal procedure? Are they feasible? As you’ll see in my contentions, truth-seeking bolsters the efficacy of our criminal justice system, whereas privacy has *zero* contemporary value, relevance, or feasibility. In other words…

# Contention 1: Privacy Is Dead

## Subpoint A: Legal Chimera

The Constitution safeguards myriad rights—freedom of speech, assembly, religion, the right to bear arms, the right against self-incrimination, even freedom from unauthorized government intrusion—yet nowhere guarantees citizens a right to privacy. The closest the Constitution comes to mentioning privacy occurs in the Fourth Amendment (unauthorized intrusion), but this concerns very qualified incidents relating to “searches and seizures.”[[4]](#footnote-4) Moreover, the Constitution facilitates the seamless abridgment of this so-called right to privacy: All the police must do to conduct searches and seizures is procure a search warrant—a mere slip of paper from the government. Privacy is constitutionally nonexistent.

Privacy advocates often cite an article by two former Supreme Court Justices, Samuel Warren and Louis Brandeis, to establish the relevance of privacy to American law. It is imperative to observe that this article does not constitute binding precedent and in effect expresses a personal opinion. In fact, when the Supreme Court eventually encoded privacy protections into Constitutional law in the 1965 decision *Griswold v. Connecticut,* they explicitly acknowledged that the right did not occur within the Constitution.[[5]](#footnote-5) This judicial activism led to the further clarification of privacy in the infamous 1973 decision *Roe v. Wade.[[6]](#footnote-6)*

American legal precedent offers us a tenuous basis for feasibly affirming privacy as an entity.

## Subpoint B: Privacy Is a Luxury, Not a Right

Imagine you live in a developing country. You’re crammed into a one-room house with a mud floor and precarious walls comprised of scraps of loose metal. Your shanty is situated in immediate proximity to twenty other families. You and your spouse have six children and are expecting your seventh. Do you have privacy? Do you *want* privacy? Can you even *conceptualize* privacy?

A right is something you deserve, something to which you are entitled by virtue of your humanity. Yet, the majority world exists without privacy in practice and arguably any notion of privacy. Privacy is a luxury we enjoy in developed nations, not a right deriving from basic human dignity. And, as I’ll demonstrate in my third subpoint, we can’t even enjoy privacy because…

## Subpoint C: Technology Precludes Privacy

Even if privacy was feasible at some point in time, contemporary technology nullifies its viability for us. As Dr. Suzanne Barber writes for the University of Texas-Austin in a piece entitled “Is Privacy Dead?”

“The way we live our daily lives has changed significantly in the last decade. By transferring so many of our daily tasks and interactions to the digital realm, we’ve created a detailed digital footprint of our lives. Whether most of us are aware of it or not, we tell our devices a lot about ourselves. Many of the conversations or actions we assumed were private can be monitored, broadcast, collected, or stored in ways that violate what we want to keep private.”[[7]](#footnote-7)

Jacob Morgan seconds this sentiment in his *Forbes* article “Privacy is Completely and Utterly Dead, and We Killed It,” writing,

“Most people don’t event know what information they are giving up or to whom. For example, in their recent Privacy Index, EMC found that 51% of respondents were not willing to give up their personal information for a better experience (27% were), however, how many of these people realize that they are already doing this multiple times over every single day? In fact it’s safe to say that if you want privacy then you probably shouldn't be using the internet or own a cell phone. Privacy is even going to become more futile with the internet of things as every device with an on an off switch will be connected to the web. In the next few years appliance and device connectivity is going to come standard with toothbrushes, cars, coffee makers, alarm clocks, watches, headphones, and anything else you can think of. We will have to pay a premium for NON connected devices.”[[8]](#footnote-8)

To summarize, privacy occupies a spurious position in the American legal system. It’s a luxury only available to those in developed countries and remains unfeasible due to technological progress. Consequently, privacy is a wholly non-pragmatic ideal and should be rejected. Let’s consider the pragmatic viability of truth-seeking in my second contention…

# Contention 2: Truth-Seeking Feasibly Affords Numerous Benefits

I’ve demonstrated that privacy contains no pragmatic worth. On the contrary, legal scholars concur that truth-seeking feasibly affords benefits to criminal procedure. In a peer-reviewed article, Thomas Weigend, a professor of criminal law at the University of Cologne, writes, “the search for truth is an indispensable part of the criminal process.”[[9]](#footnote-9) Pursuing truth:

1. Safeguards innocents: The more facts available to judicial decision-makers like judges and juries enables them to exonerate the correct individuals.
2. Upholds justice: The flipside of the above is that the guilty are convicted. You can’t administer punishment when you cannot ascertain guilt, and you cannot ascertain guilt without pursuing truth.
3. Protects society: The fewer dangerous people roam society, the more society flourishes.

The pragmatic objective of truth-seeking supersedes the unfeasible goal of individual privacy.

Opposing This Case

## Value: Debunk Pragmatism.

1. Moral Repugnance: Pragmatism is commonly associated with the catchphrase “the ends justify the means,” meaning that as long as some action accomplishes a particular meritorious objective, that action is worthwhile. This is thoroughly disconcerting—is murder ever justified, even it accomplishes a greater good? You can reject pragmatism from the outset due to these unpalatable implications and sever your opponent’s contentions from their value framework.
2. Meaninglessness: How do we determine which results are “good” and “bad?” We use theoretical values. Otherwise, “good” and “bad” are meaningless terms for consequences. Pragmatism reduces to theory at some point, so we should use that theory to evaluate our debate round.

## Criterion: Debunk Feasibility.

Simply because something is unfeasible does not make it valueless. We’ll never abolish poverty, but we should still aspire to do so. We will never actualize world peace, but this does not reduce its desirability as an end. We may never win LD Nationals (a sad reality y’all), yet this does not mean we shouldn’t strive for the championship trophy.

## Contention 1: Prove Privacy’s Worth.

The Bill of Rights, while not explicitly mentioning privacy, arguably contains undertones of protecting privacy. If privacy can be construed as preventing government intrusion into our private lives (the definition shift you’ll have to engage in as negative), then the entirety of the Constitution is oriented towards protecting privacy. Regarding the second subpoint, many NGOs and government assistance programs are lobbying to increase privacy protections in developing countries.[[10]](#footnote-10) In terms of the third subpoint, impact your refutation of the criterion—privacy still might be worth pursuing even in the era of big technology.

If privacy is worthless, then why do “Nearly all international declarations of rights include explicit protections for privacy[?] Article 12 of the Universal Declaration on Human Rights 1948 declares the right to be free from arbitrary interference with one’s privacy, home or correspondence. Similar language is enshrined in Article 17 of the International Covenant on Civil and Political Rights 1966, Article 14 of the UN Convention on Migrant Workers, and Article 16 of the UN Convention of the Protection of the Child. A number of regional human rights charters and conventions recognize the protection of privacy, including Article 10 of the African Charter on the Rights and Welfare of the Child, Article 11 of the American Convention on Human Rights, Article 4 of the African Union Principles on Freedom of Expression, Article 5 of the American Declaration of the Rights and Duties of Man, Article 21 of the Arab Charter on Human Rights, and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.”[[11]](#footnote-11)

1. “Criminal Procedure,” *Legal Information Institute*, Cornell University, <https://www.law.cornell.edu/wex/criminal_procedure>. [↑](#footnote-ref-1)
2. “Privacy,” *Business Dictionary*, <http://www.businessdictionary.com/definition/privacy.html>. [↑](#footnote-ref-2)
3. “Pragmatism,” *Oxford English Dictionaries*, <https://en.oxforddictionaries.com/definition/pragmatism>. [↑](#footnote-ref-3)
4. Fourth Amendment, United States Constitution, <http://constitutionus.com>. [↑](#footnote-ref-4)
5. 381 U.S. 479 (1965), *Griswold v. Connecticut*, <https://supreme.justia.com/cases/federal/us/381/479/>. [↑](#footnote-ref-5)
6. 410 U.S. 113 (1973), *Roe v. Wade*, <https://supreme.justia.com/cases/federal/us/410/113/#tab-opinion-1950137>. [↑](#footnote-ref-6)
7. Suzanne Barber, “Is Privacy Dead?” Center for Identity, University of Texas-Austin, <https://identity.utexas.edu/id-experts-blog/is-privacy-dead>. [↑](#footnote-ref-7)
8. Jacob Morgan, “Privacy Is Completely and Utterly Dead, and We Killed It,” *Forbes*, 19 August 2014, <https://www.forbes.com/sites/jacobmorgan/2014/08/19/privacy-is-completely-and-utterly-dead-and-we-killed-it/#3843354f31a7>. [↑](#footnote-ref-8)
9. Thomas Weigend, “Should We Search for Truth and Who Should Do It?” *North Carolina Journal of International Law and Commercial Regulation*, 36, no. 2 (2011), <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1930&context=ncilj> [↑](#footnote-ref-9)
10. “Privacy and Developing Countries,” Privacy Commissioner of Canada. <https://priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2011/hosein_201109/> [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)