Knowledge vs. Privacy: Resolutional Overview

By Mark Csoros

Resolved: In democratic elections, the public’s right to know ought to be valued above a candidate’s right to privacy.

Hello, and welcome to a new year of Lincoln Douglas debate! This resolutional overview is designed to give you a jumpstart on your preparation for the upcoming competitive year, by introducing you to some of the key terms and concepts that form the foundation of this resolution. This first five sections of this article relate to the five key terms featured in the resolution: democratic elections, the public, the right to know, candidates, and the right to privacy. The sixth section defines and explains the term “rights” as they apply to this resolution, and is designed to help you get a better grasp of the concepts that underlie the right to know and the right to privacy. Each of the six sections contains at least one dictionary definition of the term in question, plus an explanation of the term’s deeper meaning and impact on the resolution.

## PART I: Democratic Elections

### Definitions

The best definition of this term comes from Jeane Kirkpatrick, who was President Reagan’s Ambassador to the United Nations for four years, received the Presidential Medal of Freedom (America’s highest civilian honor), and held a Ph.D. in political science from Columbia. Kirkpatrick wrote that:

“Democratic elections are not merely symbolic legitimations or collective affirmations. They are competitive, periodic, inclusive, definitive elections in which the chief decision-makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their criticisms, and to present alternatives.”[[1]](#footnote-1)

I really like that definition, but just for good measure, let’s hear from the Encyclopedia Britannica. In an article on elections and a section entitled “Elections of officeholders,” the Encyclopedia says:

“Electorates have only a limited power to determine government policies. Most elections do not directly establish public policy but instead confer on a small group of officials the authority to make policy (through laws and other devices) on behalf of the electorate as a whole.”[[2]](#footnote-2)

Those are both solid definitions of the kind of election that this resolution centers around, although I much prefer Ambassador Kirkpatrick’s definition. But, there’s something missing from each of these definitions.

### Definitional Criteria

Knowing what something is and knowing its essential components are two different things. Take, for example, the age-old question about whether a hot dog is a sandwich. We know what a hot dog is, and we know what a sandwich is, but we still argue about what characteristics of a sandwich make it a sandwich, and about whether hot dogs share those necessary characteristics. For the record, the answer depends on whether you use the U.S.D.A definition of sandwich (two pieces of bread with something in between) or the Merriam-Webster definition (two pieces of bread or a split roll). To avoid that kind of confusion in our debate rounds, let’s make sure we understand what conditions are required for an election to be democratic.

Once again, Ambassador Kirkpatrick lends us a helping hand. She wrote:

“The legal requisites of democratic elections are a constitutional system that features rule of law, respect for basic democratic rights, especially free speech, press, assembly, and electoral laws that permit broad participation, active competition, and an honest count.”[[3]](#footnote-3)

Further, the National Democratic Institute, a global NGO (nongovernmental organization) that works to support democratic institutions, tells us that:

“The right to participate in public affairs, voting rights and the right of equal access to public service…articulates, among other criteria for democratic elections, the following principles: Freedom of political association, i.e. to form and/or join political parties.

Freedom of peaceful assembly, i.e. to hold and participate in political events and rallies.

Freedom of movement, i.e. to travel without undue restriction to build electoral support.

Freedom of information, i.e. to seek, receive, and offer information to make informed choices. Freedom of political expression, i.e. to articulate support for a choice without recrimination. Freedom from coercion, i.e. to exercise political choice without intimidation or fear of retribution.”[[4]](#footnote-4)

For an election to be democratic, it must fulfil each of the criteria listed by Ambassador Kirkpatrick and the NDI. If one criterion is missing from an election, then that election is not democratic and is not included under this resolution. I recommend that you keep those two lists handy during tournament season and use them as checklists to verify the relevance of any applications that you consider running, or that your opponent runs. There’s nothing worse than spending valuable speech time on an application that simply doesn’t apply to the resolution, and these checklists will help you avoid that mistake and recognize when your opponents make it.

## PART II: The Public

This is a very simple definition, and you probably won’t ever need to quote this definition in a debate round. However, it’s important to have a solid understanding of what the public is and who makes up the public, because it helps broaden your view of the resolution and uncover some of its hidden aspects. Merriam Webster defines the noun “public” as: “the people as a whole,”[[5]](#footnote-5) or the “populace.”[[6]](#footnote-6) Keep in mind that the resolution uses “public” as a noun, not as an adjective.

### Definitional Criteria

That definition begs the question “who is a member of the public?”. Put simply, the public is everyone in a democratic society. Voters, non-voters, the press, and even elected officials themselves are members of the public. This may seem so common-sense that it isn’t worth mentioning, but it leads us to some interesting resolutional questions. Do journalists have an ethical obligation to publish any information that would interest the public, even if the information was obtained unethically and is private to the candidate? If a reporter obtains that sort of private information, can he be prevented from publishing it, or would that infringe upon his freedom of expression?

If candidates themselves can access private information about their opponents, doesn’t that increase the likelihood that elections will feature more personal attacks and less focus on policy? If voters learn a secret about a candidate’s past, might that influence them to vote against the candidate even if the secret doesn’t affect the candidate’s qualifications to hold office? Should political challengers be able to use Freedom of Information laws (which we’ll discuss in a second) to dig up dirt on currently elected officials? These are all fascinating resolutional questions, but we can only access these types of questions if we consider all the different groups that make up the public, and weigh the interests, motivations, and rights of these groups.

## PART III: The Right to Know

### Definitions

The American Heritage Dictionary of the English Language defines “right to know” as “of or relating to policies and laws that make some governmental records and other information available to a person who can demonstrate a right or need to know the contents.”[[7]](#footnote-7) Similarly, Oxford Dictionary’s Lexico defines the term as “Of or pertaining to laws or policies that make certain government or company records available to any individual who can demonstrate a right or need to know their contents.”[[8]](#footnote-8) Now, you might be thinking that those laws apply to governments, which means that they apply to already elected officials, which means that they don’t apply to candidates. You’d be right, but in democratic systems, elected officials are candidates too, and I’ll explain why in a later section.

Digging a bit deeper, a lecture from way back in 1976 contains a bit of buried treasure. Yale Law School professor Thomas J. Emerson said:

“It is clear at the outset that the right to know fits readily into the first amendment and the whole system of freedom of expression. Reduced to its simplest terms the concept includes two closely related features: First, the right to read, to listen, to see, and to otherwise receive communications; and second, the right to obtain information as a basis for transmitting ideas or facts to others.”[[9]](#footnote-9)

### Cautionary Notes

I would be very careful about using the first two definitions in competition, for two reasons. First, those two definitions define “right to know” as an adjective (a word that describes a noun), while the resolution is clearly using “right to know” as a noun (a person, place or thing). Moreover, the adjective describes the noun “policies or laws that make governmental information available,” not the noun that’s in the resolution (the right of the people to access information). Put simply, the first two definitions are using the wrong form of the word (a descriptor, not a thing) to describe laws that make information available, not the actual right to have that information made available.

Second, the first two definitions are about Freedom of Information (or FOI) laws, the most famous of which is the federal Freedom of Information Act, or FOIA. FOIA was passed in 1966, to encourage “the watchdog function of the public over the government.”[[10]](#footnote-10) Eventually, people and business started to exploit FOIA, using it to violate privacy rights or gain competitive advantages, and the Supreme Court stepped in to close the exploited loopholes, but no system is completely airtight. Like I said in the last definitions section, because these laws do affect the privacy rights of elected officials, and because elected officials do count as candidates, FOI laws definitely have a place in this resolution. However, most of the information about candidates that are actually in an election is obtained through candidate disclosure rules, which we’ll read about in a bit. Therefore, any definition that is exclusively geared towards FOI laws neglects the primary pillar of the public’s right to know.

### The Takeaway

You may be wondering why I bothered including the first two definitions of “right to know” in the first place, since I spent the next three paragraphs telling you to why you shouldn’t use them. First, because I can almost guarantee that you’ll have rounds this year where your opponent uses one of those definitions, and you’ll need to understand that definition’s limitations. Second, flawed definitions can be useful in creating what we call “operational definitions.” Operational definitions are definitions that aren’t cut and pasted from a dictionary, but are instead made up of, or influenced by, concepts and phrases from one or more dictionary definitions. These are especially helpful in situations like this, where the best available dictionary definitions don’t quite capture a resolutional term’s contextual meaning.

## PART IV: Candidates

### Definitions

Merriam Webster defines a candidate as: “one that aspires to or is nominated or qualified for an office, membership, or award.”[[11]](#footnote-11) Similarly, Cambridge Dictionary defines the term as “a person who is competing to get a job or elected position.”[[12]](#footnote-12) That’s all very straightforward, but just like with our definitions of democratic elections, we need to do a bit more work. We need to figure out exactly who counts as a candidate, in the same way that we found out exactly what counts as a democratic election.

### Definitional Criteria

Earlier, I said that the term “candidate,” in a democratic society, doesn’t just apply to those people who are actively running for a position during an election season. In democratic elections, and therefore in this resolution, a candidate is anyone running for office and anyone currently holding an elected position in government. Why is this so? It’s because elected officials don’t hold their offices forever. Members of the U.S. House of Representatives serve two-year terms, and then must be reelected or they lose their seat. Presidents serve four-year terms, Senators serve six-year terms, and members of state governments (like state legislators and Governors) have terms set by the laws of their respective states. These elected officials can also be removed from office through the impeachment process, and public knowledge and opinion often determines the outcome of impeachment proceedings. In some states (my home state of Texas, for instance), even members of the judicial branch are elected by voters, and must maintain popular support or be replaced. In the federal judiciary, judges are appointed by the President, pending a vote of consent from members of the Senate, and both state-level and Federal judges can be impeached.

In other words, politicians are constantly candidates, from the moment they put their names on the ballot, to the moment they’re sworn into office, to the moment that they retire from public life. This is especially clear in parliamentary systems like the United Kingdom’s, where a vote of no confidence can result in an entirely new election.[[13]](#footnote-13) So, don’t make the mistake (or let your opponent get away with the mistake) of only applying the resolution to politicians who are in a literal campaign for election or reelection.

### The Impact

This is crucially important to your understanding of the resolution. Defining the term “candidate” too narrowly will exclude some very important examples of resolutional conflict. The Watergate Scandal, for instance, where President Richard Nixon claimed that executive privilege (a fancy way of saying “his right to privacy”) meant that he could keep information from Congress and from the public, wouldn’t be an allowable application if the term “candidate” didn’t also include sitting office-holders.

## PART V: The Right to Privacy

### Definitions

Cornell Law School’s Legal Information Institute defines the right to privacy as “the right not to have one's personal matters disclosed or publicized; the right to be left alone.”[[14]](#footnote-14) Similarly, Merriam-Webster defines it as “the right of a person to be free from intrusion into or publicity concerning matters of a personal nature.”[[15]](#footnote-15) Those are both pretty straightforward, but things get a bit more complicated when we start to investigate what counts as a personal matter, what happens if we disclose our own information, and what constitutes an “intrusion.”

### The Two-Part Test

There are decades of Supreme Court jurisprudence and legal wrangling on these finer points of privacy, but it all boils down to a simple two-part test. In the landmark case *Katz v. U.S.*, Supreme Court Justice John Harlan concurred with the majority, deciding that a person has a right to privacy if:

“…first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable." Thus, a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected," because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.”[[16]](#footnote-16)

Even when both parts of the two-part test are in place and the right to privacy exists, it can be justifiably overridden. Under the 4th Amendment, law enforcement can obtain a warrant to access to someone’s private information, and this resolution is asking us whether the public’s right to know justifies that same kind of encroachment.

## PART VI: Rights

Interestingly enough, none of the definitions in Parts II and III defined what a right actually is. Even more interestingly, I can’t ever remember a definition of “right” being presented in LD round. It’s one of those terms that we just take for granted, and we get away with it most of the time. In this context of this resolution, there are three fairly similar definitions of rights that are all show potential, and one definition that should be avoided at all costs.

### Definitions

Let’s start with the one to avoid, which is also the one that initially looks the most appealing. We’ve been using legal definitions for the past few pages, so why shouldn’t we use a legal definition here? Black’s Law Dictionary defines “legal right” as “the term given to a right or privilege that if challenged is supported in court.”[[17]](#footnote-17) Let’s look at the other three, and then we’ll get into why this one is bad. The Stanford Encyclopedia of Philosophy says that “rights are entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states.”[[18]](#footnote-18) Macmillan Dictionary defines a right as: “something that you are morally or legally [allowed](https://www.macmillandictionary.com/us/dictionary/american/allow) to do or have,”[[19]](#footnote-19) and Merriam-Webster defines it as “something to which one has a just claim: such as the power or privilege to which one is justly entitled.”[[20]](#footnote-20)

Can you see how those definitions are subtly but importantly different from the legal definition of a right? Stanford’s philosophical definition covers all entitlements, Black’s legal definition only covers the ones that will stand up in court. Macmillan includes what we’re morally or legally allowed, Black’s covers what we’re legally allowed. Merriam-Webster talks about our just claims and entitlements, Black’s talks about the claims and entitlements that a court would recognize.

### The Impact

Avoiding the legal definition of a right is so important because LD is “ought” debate, not “is” debate. We aren’t here to argue about how the law values the public’s right to know versus a candidate’s right to privacy, we’re here to argue about how that valuation ought to be made. Black’s definition of legal right forces us to define each side of the resolution using the standards of existing law. Those existing standards tell us that a candidate has a reasonable expectation of, and therefore the right to, privacy in every area except those covered by FOI laws and candidate disclosure rules, because the courts won’t support a candidate’s challenge in those areas. The current legal standard says that the public has a right to know only what is covered by FOI laws and candidate disclosure rules, because the courts won’t support challenges to a candidate’s privacy in any other areas. There can’t be any clash in the resolution, because the two sides have abandoned their tug-of-war match and settled down to a staring contest.

## In Conclusion

This overview isn’t meant to be, nor could it possibly be, a comprehensive list of everything that you need to know about this resolution or its terms. It’s a starting place, from which you can delve deeper into the complexities of this resolution. I’m excited for this year of NCFCA LD, and I hope you are too, because I have high hopes for this topic area. I fully expect that this will be an enjoyable and educational year of LD, and so I fully expect you to learn lots and enjoy a great resolution.

1. Former U.S. Ambassador to the United Nations Jeanne Kirkpatrick, November 1982. “Democratic Elections and Democratic Government”; Presented at a conference held by the American Enterprise Institute and the U.S. Department of State. <https://www.jstor.org/stable/20672013?seq=1> [↑](#footnote-ref-1)
2. The Encyclopedia Britannica. “Functions of Elections” <https://www.britannica.com/topic/election-political-science/Functions-of-elections> [↑](#footnote-ref-2)
3. Former U.S. Ambassador to the United Nations Jeanne Kirkpatrick, November 1982. “Democratic Elections and Democratic Government”; Presented at a conference held by the American Enterprise Institute and the U.S. Department of State. <https://www.jstor.org/stable/20672013?seq=1> [↑](#footnote-ref-3)
4. The National Democratic Institute. *(The NDI is a non-governmental organization that works to support free and fair elections around the globe. It is not affiliated with the Democratic Party.)* “Applying International Election Standards: A Field Guide for Election Monitoring Groups” <https://www.ndi.org/sites/default/files/Applying-International-Standards-ENG.pdf> [↑](#footnote-ref-4)
5. Merriam-Webster Dictionary. “Public” <https://www.merriam-webster.com/dictionary/public> [↑](#footnote-ref-5)
6. Merriam-Webster Dictionary. “Public” <https://www.merriam-webster.com/dictionary/public> [↑](#footnote-ref-6)
7. The American Heritage Dictionary of the English Language. “Right-to-know”; Accessed via The Free Dictionary. <https://www.thefreedictionary.com/right-to-know> [↑](#footnote-ref-7)
8. Oxford’s Lexico Dictionary. “Right-to-know”  <https://www.lexico.com/en/definition/right-to-know> [↑](#footnote-ref-8)
9. Yale University Law Professor Thomas I. Emerson, March 1976. “Legal Foundations of the Right to Know”; Published by Washington University Law Review. <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2625&context=law_lawreview> [↑](#footnote-ref-9)
10. J.D.s Fred H, Cate, D. Annette Fields, and James K. McBain, 1994. *(Cate has a J.D. from the Stanford University School of Law, and at the time of publication was a Senior Fellow at The Annenberg Washington Program in Comminucations Policy Studies at Northwestern University. Fields holds a J.D. from Loyola University of Los Angeles, and at the time of publication practiced law relating to FOIA claims. McBain holds a J.D. from Indiana University School of Law, and an LL.M. from Georgetown University School of Law.)*  “The Right to Privacy and the Public’s Right to Know: The ‘Central Purpose’ of the Freedom of Information Act”; Published by the University of Indiana’s Maurer School of Law. <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1740&context=facpub> [↑](#footnote-ref-10)
11. Merriam-Webster Dictionary. “Candidate” <https://www.merriam-webster.com/dictionary/candidate> [↑](#footnote-ref-11)
12. Cambridge Dictionary. “Candidate” <https://dictionary.cambridge.org/us/dictionary/english/candidate> [↑](#footnote-ref-12)
13. The BBC, Sep 30 2019. “What is a vote of no confidence?” <https://www.bbc.com/news/uk-politics-46890481> [↑](#footnote-ref-13)
14. Cornell Law School’s Legal Information Institute. “Right to Privacy” <https://www.law.cornell.edu/wex/right_to_privacy> [↑](#footnote-ref-14)
15. Merriam-Webster Dictionary. “Legal Right” <https://www.merriam-webster.com/legal/right%20of%20privacy> [↑](#footnote-ref-15)
16. Supreme Court Justice John Harlan, Dec 18 1967. “Concurrence, Katz v. United States.” Legal Information Institute, Cornell University. www.law.cornell.edu/supremecourt/text/389/347 [↑](#footnote-ref-16)
17. Black’s Law Dictionary, 2nd Edition. “Legal Right” <https://thelawdictionary.org/legal-right/> [↑](#footnote-ref-17)
18. The Stanford Encyclopedia of Philosophy First published Dec 19, 2005, substantive revision Feb 24, 2020. “Rights” <https://plato.stanford.edu/entries/rights/> [↑](#footnote-ref-18)
19. Macmillan Dictionary. “Right” <https://www.macmillandictionary.com/us/dictionary/american/right_3> [↑](#footnote-ref-19)
20. Merriam-Webster Dictionary. “Right” <https://www.merriam-webster.com/dictionary/right> [↑](#footnote-ref-20)