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ncfca

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Contents

Read this First

The aphorism that knowledge is power is as apt a mantra for debate as it is for any activity. The 2014 NCFCA edition is chock full of critical analysis of the topic that will propel you ahead of the competition this season. As usual, we focus on what's so lacking in homeschool debate: resolutional analysis. But one thing hasn't changed: we are very excited to present you with this resource, and we still only ask for one thing: commit to challenging everything we say.

Here's what that commitment means: for every argument you find in Dominate, make yourself articulate three compelling arguments that refute it. We ask this because the arguments that you'll develop from refuting our ideas in this sourcebook are more valuable than our ideas themselves. Debaters are convincing, and debaters with combined decades of experience came together to create this resource. If reading this book will only make you convinced that we are right, it has done more harm than good.

Email us for a refund, no explanation required, and you can delete this off your hard drive; doing so is a reflection of an understanding of what you know you can commit to. It shows you are dedicated to bettering yourself even if it means going without a book to help you along the way.

Please come to us with any questions you have, and you will get an answer. Our email is mail@dominatedebate.com. We are very proud of this edition of Dominate and we hope you find it helpful.

Sincerely,

Jon Chi Lou
Founder

Resolutional Analysis

Overview

Resolved: National security ought to be valued above freedom of the press.

So what exactly are the cooties? What are the symptoms, and how can you tell a case of the cooties apart from a case of the common cold? If not a person who eats pumpkins, what is a "pumpkin eater" and why does a person become one after they are found to be cheating? And who (or what) is a booger head, exactly?

There are some things in life that are really never clearly defined. But this year's resolution is not one of those things.

When you're preparing for a debate round, it's important to know the definitions of the terms being used. But more than that—if you want to succeed, you not only have to know what definitions are available, you also have to know which one best fits your personal strategy. Every definition comes with its own nuances, details and changes in how the resolution is portrayed, interpreted and debated. That's why we've decided to provide you with not only a list of definitions that you will need, but also analysis on each and every one so that you can find the best definition possible for your strategy.

National Security

> "A collective term for the defense and foreign relations of a country, protection of the interests of a country."
> – Random House Dictionary

> "A collective term encompassing both national defense and foreign relations of the United States. Specifically, the condition provided by: a. a military or defense advantage over any foreign nation or group of nations; b. a favorable foreign relations position; or c. a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert."
> – Dictionary of Military and Associated Terms with the US Department of Defense

These definitions are perhaps the most clear. They outline specific agencies and areas that can be counted as part of "national security" and thus highlight what is not a part of national security. After reading one of these definitions in the debate round, there should be no confusion whatsoever about what national security is or what it encompasses.

Additionally, these definitions have the advantage of being rather common-man. Although they are a bit more specific than what the common man would provide you, for the most part they fit perfectly with the average person's interpretation of national security. However, these definitions include foreign affairs to be part of national security. If you're like me, that's great news! There can never be enough discussion about foreign affairs. Just be sure that you're ready to deal with the additional ground these resolutions provide. The United States' military decisions in Afghanistan become part of national security. Our relations with Russia become part of national security. Edward Snowden's release of NSA material regarding US spies in other countries

becomes a matter of national security. Be sure you're up to date on your foreign relations before you choose to use a definition such as this.

> "National security is a corporate term covering both national defense and foreign relations of the U.S. It refers to the protection of a nation from attack or other danger by holding adequate armed forces and guarding state secrets. The term national security encompasses within it economic security, monetary security, energy security, environmental security, military security, political security and security of energy and natural resources."
> – US Legal

This definition deals with effects. Whereas the above definitions defined national security by where they took place, this definition defines national security based upon the intended effect of the policies being made. National security can encompass any action, mandate, secret or office so long as it encompasses one of the areas of security mentioned above. This is significant because of the breadth of security policies mentioned. Economic security encompasses bank policies, monetary policies and organizations such as the federal reserve. Energy security includes nuclear facilities as well as wind mills, offshore drilling, electric cars and ethanol subsidies. Environmental security can include national forests, the Clean Air Act and every EPA policy ever created.

Wow.

This definition is a little bit of a red flag. Okay, a huge red flag. The definition includes virtually every US policy currently enacted. So long as a policy was created with the intent of securing one of the aforementioned fields, it counts as a part of national security. That's kind of intense, especially in light of the resolution. To affirm the resolution under this light, you would have to argue that restricting the press and violating the freedom of the press is justified in order to protect endangered fish reserves. No one wants to have to argue that.

Merriam Webster defines "security" as follows:

> "Measures taken to guard against espionage or sabotage, crime, attack."
> – Merriam Webster

This definition narrows the resolution to simply the fight against terrorism, espionage and crime. This definition is accurate in many regards, and still allows for a broad resolution. For example, since the fight to build a permanent and stable government in Pakistan is considered by experts to be a preemptive strike against terrorism by preventing Al Qaeda from taking over Pakistan, our policies in Pakistan would be considered national security matters. While that may sound like stretching it, it fits perfectly with this definition, and with the definitions of many national security strategists.

> "The protection or the safety of a country's secrets and its citizens."
> – Macmillan Dictionary

As simple as it is, I have to say that this definition is my personal favorite. It is free from needless details, accurate, short and to the point. It also avoids encompassing unnecessary ground. Under this definition, something is a matter of national security so long as it deals with

the safety of a nation's citizens or secrets. Yay. This encompasses Edward Snowden, national secrets and the pentagon without necessarily including the President's visit to Pakistan or lobster trading laws. This straight-forward definition tells you all you need to know.

Value(d)

> "The regard that something is held to deserve."
> – Oxford Dictionary
>
> "To regard highly; esteem."
> – The American Heritage Dictionary of the English Language
>
> "Highly regarded or esteemed."
> – Random House Dictionary

Short, sweet, and almost unnecessary, these definitions provide the most plain interpretations of the word "value." However, while the definitions themselves may not provide complications, their impact on the debate round might. These definitions interpret value to be determined based upon how much the individual regards or esteems them. In the debate round, that means that you will be required to show examples of where individuals intended to value one thing above another, regarded one thing above another or wanted to uphold one thing above another. In some instances (such as hard mandates or direct policies) this can be easy to interpret. However, in other circumstances it can be a bit fuzzier. Strategy decisions that did not make any hard policies, mandates that changed and soft policies that were considered ineffective can all be questioned under these definitions.

> "Worth in usefulness or importance to the possessor; utility or merit."
> – The American Heritage Dictionary of the English Language
>
> "Useful and important."
> – Cambridge Dictionary
>
> "Relative worth, utility, or importance."
> – Merriam Webster Dictionary

These definitions put an entirely different spin on the resolution. Instead of asking whether national security or freedom of the press ought to be held higher, or which one is "better" in some vague sense, it asks which one is more pragmatically useful. Which one has more relative utility? Other articles in this sourcebook discuss how this resolution lends itself to values debate with policy impacts—this is just one more way that pragmatic, policy arguments can be transitioned into this values resolution.

Freedom of the Press

> "The right to publish news and opinions in the press without the government removing any of the information."
> – Oxford Dictionary

This definition is perhaps the most straight-forward definitions of 'freedom of the press'. It provides a common-man interpretation of the term—whenever the average person thinks of freedom of press, this definition represents what that person is likely thinking of. However, it is also one of the most vague definitions available. So long as something is a story and/or an opinion, and is able to be published, it counts as a part of the press.

The definition also does not specify any particular sort of control the government can or cannot exercise. The definitions only state that in order for the press to be free, the government must have no control over what is printed, published or expressed. This definition opens up the ground to the most debate, legitimizes the broadest amount of applications and overall allows you to debate the resolution as a whole, rather than in only one or two situations.

> "The right to publish newspapers, magazines, books, etc. without government interference or prior censorship."
> – Webster's New World College Dictionary

> "The right of newspapers to publish stories and articles without being controlled by the government."
> – Macmillan Dictionary

If you're more a fan of narrow resolutions, hate debating topics in general, and would like to focus only on print media, these are the definitions for you! The first definition limits "press" to simply things that are printed and published, or that will be printed and published. By these definitions, the abolition of a blog site would in no way infringe upon the freedom of the press. Banning a news anchor from television because his or her views were found to be "dangerous" would not infringe upon the freedom of the press. Cutting a radio show off and banning the signal would not be an infringement upon the freedom of the press, et cetera.

The second definition goes even further, stating that newspapers and newspapers alone are "the press." In addition to the above circumstances not counting as violations of freedoms of the press, this definition would exclude even more. According to this definition, books banned by the government would not count as violations of the freedom of the press. Banning pamphlets would not violate the freedom of the press. Even magazines would not be allowed the freedom of the press! In my view, this limits the resolution far too much, and pushes the resolution to the point where it may no longer be debatable. (But since Dominate is a sourcebook and not a newspaper, I might not be entitled to hold that opinion. Gasp!)

> "The right of publishing books, pamphlets, newspapers, or periodicals without restraint or censorship subject only to the existing laws against libel, sedition, and indecency."
> – Merriam Webster Dictionary

> “The right to publish newspapers, magazines, and other printed matter without governmental restriction and subject only to the laws of libel, obscenity, sedition, etc.”
> – Random House Dictionary

So there are exceptions! These definitions take the common man definition of “freedom of the press” and excludes certain acts. According to these definitions, existing laws restricting the freedom of the press do not count as violations on the freedom of the press. Thus, libel laws, obscenity laws and sedition laws do not violate freedom of the press!

This definition puts an interesting turn on the resolution. While some may want to argue freedom of the press as unrestricted, fierce and dangerous, these definitions would put that debate to rest. Affirmatives wishing to argue that all press must be restricted would now have to prove that the press must be restricted further than simply libel, obscenity and sedition. Negatives wishing to argue a balanced position might actually be able to pull off their position under this definition. While these definitions pose an interesting dynamic for a debate round, I don’t foresee them becoming popular. The complications provided by these definitions mostly affect the affirmative in a negative way. However if the affirmative relied on very specific examples, all of which were outside the scope of libel, obscenity and sedition, the aff would have a very good reason to use this definition. This definition appears to be slightly weighted towards the negative, so any affirmative willing to use it would almost certainly be free from having their definition challenged. As it limits the debate round significantly, it may help the affirmative to preemptively defeat the negative’s prepared examples.

Despite the fact that these definitions will likely not be popular for the most part, keep them in mind as you debate throughout the year. If you feel that you can use them, these definitions offer the affirmative a rather substantial advantage. Bring them into your negative rounds as well, in case you need to challenge the affirmative’s definitions.

> “The right, guaranteed by the First Amendment to the U.S. Constitution, to gather, publish, and distribute information and ideas without government restriction; this right encompasses freedom from prior restraints on publication and freedom from Censorship.”
> – West's Encyclopedia of American Law

What an interesting switch! While the previous definitions specifically included libel, obscenity, and other such prior restraints, this definition specifically excluded them! It is practically the inverse of the previous definitions, heavily weighted aff and broadening the resolution in the extreme. This definition easily lends itself to interpretations of the resolution which include extreme press, harmful press and illegal press. Additionally, it includes every aspect of the press possible—anything that distributes information is counted as part of "the press”! If you’re looking for a broad definition that encompasses as much as possible, look no further.

Pitfalls to Avoid

Lincoln Douglas is a delicate form of debate—the smallest strategy decisions can change the interpretation of the entire debate round, your smallest mistakes stand out like a tomato in a fruit salad. Here are some of the mistakes that will sink your case like a manhole behind an Olympic hurdle. Beware these mistakes or you will be forever haunted by the ghost of Pitfalls Past.

Turning the Debate into a Pillow

This resolution is a values resolution… right? Right… for the most part. This resolution has a strong background in history, values and philosophy. You can hardly answer the question of the resolution without debating topics such as the extent of the freedom of the press, the value of safety without freedom or the rights of the individual versus the rights of society as a whole. However, the resolution has a strong background in policy. Let's not forget that the manifestation of the conflict in the resolution has always been either federal or state mandates, laws and regulations. The conflict has been debated in courts, and is ultimately decided by the government. To help you see what I mean, imagine what the debate would look like if the resolution were worded like this: Resolved: The United States Federal Government ought to adopt stricter press regulations in order to improve National Security.

Yes, this is a values resolution—but it also has a significant policy influence. You can win the debate round through values debate alone—if you prove that your side upholds your value and that your value is the most valuable, you will win. However, you can also win the round through policy arguments alone—if you provide a long list of disadvantages that would occur if we voted for the other debater, and proved that your disadvantages outweighed the other debater's value, you would win the round.

What this means is that in order to be successful, a case under this resolution would have to harness the best of both value and policy argumentation. If you decide to rely solely on rhetoric, quotes and fluffy sounding statements, you're going to get buried under the other team's real world analysis.

National security is not a pillow—there's no need to fluff it.

Repetition Instead of Refutation

Repetition is not Refutation. Just because you say something more than once doesn't make it true. But I'm sure I don't have to tell you that—the very foundation of competitive debate is that you have to *prove* that what you say is true. So then why do debaters, year after year, insist on using values inherent to the resolution?

If you've purchased any of our previous sourcebooks, you have probably already heard all the reasons why debaters shouldn't use values inherent to the resolution. But just in case, I want to run over those reasons one more time.

A value is essentially a short answer to the question: “Why should we uphold your side of the resolution?” If you’re affirming the resolution, your value is the ultimate reason why the judge needs to affirm the resolution. Ex: “You should affirm the resolution because upholding national security protects human life” or “You should affirm the resolution because upholding national security protects domestic tranquility.” Essentially, it should be the ultimate reason why you are right and why your opponent is wrong.

Values inherent to the resolution do not fulfill that role at all. This year, the values that are inherent to the resolution are the aff value of national security and the neg value of freedom of the press. So if you adopt a value inherent to the resolution, your argumentation becomes: “You should uphold national security because it upholds national security.” Okay… but why? Values inherent to the resolution are always repetitive and do not help your argumentation whatsoever. Some argue that values can be inherent to the resolution so long as you have a criterion that is exterior to the resolution and leads to your value. While that’s true in the case of some resolutions, it is not true this year. Some years you are given an ultimate goal in the resolution, and are asked how to achieve that value. (e.g. In the pursuit of justice, due process ought to be valued above the discovery of fact.) However, this year we are not given an ultimate goal: we are given two means and asked what the ends are. That means that this year, it is especially important for your values to be outside of the resolution.

Unless you believe that national security and freedom of the press are inherently valuable and are the most valuable things that anyone could ever achieve, then don’t use them as your value.

Not Explaining the Circumstances

Your interpretation of the resolution should come across as a story. If you don’t define the parameters of the resolution, you’re not going to be able to clearly debate the topic. Be sure to explain the circumstances behind the resolution. Talk about exactly what it means to choose between national security and freedom of the press. Does there actually have to be a conflict between the two, or is the appearance of a conflict enough? Or does a conflict at all have to be necessary? If the negative talks about the value of the two individually and never talks about conflict at all, is s/he successfully negating the resolution? If the affirmative gets up and proves that freedom of the press is dangerous and harmful to all, and argues that the press should always be monitored under every circumstnce, are they upholding the resolution?

Before you get into the round, you have to interpret the circumstances behind the resolution. Explain whether or not there has to be conflict, what that conflict looks like, and what cases are outside of your interpretation of the resolution. THEN, after you have all of this in your mind, you have to say it in round. Work on coming up with a way of explaining your interpretation in a way that is quick and easy, and fits your case. It will save you a world of trouble later on.

Nothing More than Feelings

When do we uphold national security? When do we uphold freedom of the press? It may seem obvious at first, but defining when the two come into conflict and what valuing one above the other looks like is actually vital to your success in the debate round. There are a couple of ways to tell when one is valued above the other.

One of the ways you can define “value” is based off of intentions. When the people in your example made whatever decisions they made, did they intend to value national security? Or did they intend to value freedom of the press? Did the person acting feel that they had to make a decision between the two? This one can be a little fuzzy, since it becomes incredibly difficult to tell what a person’s intentions were.

Another way that you can define conflict is by looking at which one was pragmatically upheld. If there was a policy implemented or a hard mandate enforced that clearly restricted one or the other, that is a solid way of determining when one was upheld and the other was not.

Make sure you know your definition of upholding one over the other, as it will save you from sticky situations where the difference is not always clear. For example: imagine that Wikileaks was allowed to continue, despite the national security threat it posed. But instead of harming national security, it helped security officers discover leaks and thus better secure national secrets. Even though freedom of the press was temporarily valued higher, it actually ultimately upheld national security. So which one was really valued above the other? Have your answer ready before you go into the round.

Remind Me What a “Press” is?

Do you actually have to own a press to be a part of “the press”? Is a freelance writer submitting an article considered to be a part of the “press” even before that article is accepted by publishers? Is a blogger part of the press? What about a tweet, or a video on Vine? Better question—does something have to be written for it to be considered part of the press? What about radio shows? Or the guy protesting on the street with a megaphone? If both writing and verbal messages can be considered part of “the press,” doesn’t that encompass anything anyone says to anyone else?

Without being able to clearly define the structure and/or bright line for when something is (or is not) a part of the press, you will run into countless problems. Your debate rounds will become vague, undefinable, will lose all clash, will become nearly impossible for the judge to follow and will ultimately be decided by semantics alone. You can avoid these questions rather easily… just make sure you have a viable definition of what the press is, and how you can tell when something is/is not part of the press.

For more on this pitfall, check out the Definitions article.

Who Cares if it’s a Fairy Tale?

Raise your hand if you’ve ever heard a debater argue that “That’s a nice ideal, but it’s not how things work in real life.”

Now raise your hand if you can point to the phrase is the resolution where it says that your ideals have to be workable in the real world.

The resolution states that national security ought to be valued above the freedom of the press. It doesn't argue that national security IS valued above freedom of the press, and it doesn't ask you to prove that you have a real-life alternative to the current situation.

I've already talked about how you have to keep your case true to real life and real world policies. You absolutely do. You have to show that in the real world, national security is (or is not) being held above freedom of the press, and you have to prove that that is (or is not) a good thing, depending on whether you go aff or neg. However, you absolutely do not need to provide a plan text. You do not need to provide case studies of where your ideas have already worked and you do not need a case advocate. This isn't team policy. [Don't get me wrong—if you have all those things, more power to you. However, you don't face a near automatic loss if you don't have them.]

Do not forget that your job in the debate round is to push the limits of possibilities. Talk about what ought to be, what should be, and how the world should work in an ideal world. That doesn't mean you should ignore reality completely. But it does mean that argumentation along the lines of "this has never been tried in the real world before" and "that's just not how our security system works" are weak at best. Your opponent cannot dismiss your arguments simply because nobody has implemented them yet.

Ketchup on Waffles

Just take my word for it. It's gross.

Applications

Decree of the Reich President for the Protection of People and State

Also known as the Reichstag Fire Decree, this decree was made in Germany in 1933 under the influence of the Nazi government in power at the time. In February of 1933, fire broke out in the Reichstag chambers. The origins of the fire are unknown, but it was at the time declared by Hitler and his government to have been the first strike of a communist uprising in Germany. Working off of this claim, the German government was able to imprison many Germans for supposedly being co-conspirators. Almost immediately after the fire, the government issued the Reichstag Fire Decree. This decree nullified many of the constitutional freedoms of German citizens, declaring that these restrictions on liberty were necessary to prevent the communist uprising. The mandates of the decree as translated into English were as follows:

“It is therefore permissible to restrict the rights of personal freedom [habeas corpus], freedom of (opinion) expression, including the freedom of the press, the freedom to organize and assemble, the privacy of postal, telegraphic and telephonic communications. Warrants for House searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed.”

Under this act, the German government could now make arrests of “communist conspirators” without the oversight of the public. Legal boundaries were no longer respected, and the government was free from criticism or public concern. They became above the law. So much in fact, that three weeks after this decree had been issued, Hitler’s government passed the Enabling Act. The Enabling Act allowed Hitler’s cabinet the power to create and enforce laws without the approval of any other branch of government, and without the paperwork that would normally have been required. Free from the freedom of the press and the freedom of speech, Hitler was able to shut down and imprison all dissenting opinions, making his government untouchable by the people.

The Plame Affair

Who is John Galt? The better question is, who is Valerie Plame?

In February 2002, the Federal Government received word that Niger had been selling uranium to Iraq. By order of the President, Joseph Wilson was put on a mission to discover the validity of the rumor of this uranium sale. Mr. Wilson was told by Nigerian Prime Minister Ibrahim Hassane Mayaki that he had no knowledge of this sale whatsoever. The government later received a similar tip, stating that Iraq was now seeking to purchase uranium from Africa. Mr. Wilson was again put on the case, and found no evidence that Africa was entering into business dealings with Iraq. His final report on the subject was that the evidence was inconclusive.

Then in July of 2002, the whole operation became public, and CIA covert operations were announced to the world. The *Washington Post* published a story revealing all. The article discussed how Mr. Wilson was never really a CIA agent—he had only been put on these low-level operations by the request of his wife. His wife, it was revealed, was actually a covert agent for the CIA. She was a specialist in weapons of mass destruction, and worked on the CIA's most secret investigations. The article even published her full name—Valerie Plume Wilson. Mr. Wilson commented on the article, stating that "Naming her this way would have compromised every operation, every relationship, every network with which she had been associated in her entire career." He refused to make further comment without the presence of his wife.

Following the disclosure, the CIA requested a criminal investigation by the Department of Justice into the matter. While initially the White House denied his guilt, Lewis Libby (Chief of Staff of Vice President Dick Cheney) was found to be the source of the leak. He was sentenced to 30 months in prison, a $250,000 fine and two years on probation after his release.

Lewis Libby was charged under the Intelligence Identities Protection Act of 1982. This act stated that anyone who had access to the name or identity of any covert agents would not be allowed to publish this information if they had any reason to believe that publication of this information would be detrimental to a US national security operation.

A similar case was the case now known as "Who is Rich Blee?" The case focused on filmmakers who planned to release a documentary entitled "Who is Rich Blee?", which focused on the CIA's Bin Ladin unit before 9/11, and the way certain CIA officials blocked information on 9/11 hijackers from reaching the FBI before 9/11. In this documentary they planned to reveal the identities of two covert CIA agents. However, the CIA sent the filmmakers written threats, warning them that if their documentary revealed the identities of any CIA agents they would face criminal charges. The documentary was adapted, and the agents' names were removed from the film.

The Star Chamber

In England during the 17th century, seditious libel was a serious offense that was punishable by life imprisonment. You were found guilty of seditious libel if you published or said anything that was intended to bring hatred or contempt to the Queen or her heirs, the government and constitution, either House of Parliament, the administration of justice, if it incites people to attempt to change any matter of Church or State established by law, or promote discontent among or hostility between British subjects.

The prosecution of these cases were held in The Star Chamber. This chamber tried cases of utmost secrecy. As such court proceedings were held in secret, and there were no indictments or witnesses allowed. There were no juries, and decisions were made by the judge alone. Even evidence could only be presented in written format. The Star Chamber became famous for its arbitrary rulings.

The most famous case tried by the Star Chamber was the case of De Libellis Famosis, which defined the laws and restrictions regarding libel and sedition. Under this case, others were tried and found guilty. John Peter Zenger was arrested and imprisoned for seditious libel after his newspaper criticized the colonial governor of New York. Joseph Howe was also charged and found guilty of seditious libel after his newspaper printed allegations that against local politicians and the police. However, even under the ruling set by the De Libellis Famosis case, judges and juries had different ideas about what seditious libel really was. Both of the above individuals, after being found guilty by a judge, were able to bring their case to a jury. Both were acquitted by that jury. Cases such as these lead one writer to conclude that seditious libel was like an accordion—something you could stretch, grow or shrink, depending upon the will of the judge alone.

The Star Chamber reflected what would later be argued under the Espionage Act—it becomes impossible for a person to have a fair trial when they are not allowed to publicly discuss the documents for which they are being prosecuted. Additionally, even the most well-written laws can become vague and arbitrary when dealing with a topic as hard to define as the freedom of the press. Most of all, the Star Chamber and the seditious libel laws of England prove that even when government censorship is intended to provide a safe and stable country for the people, governmental censorship knows few boundaries.

Prevention of Terrorism Act

The Prevention of Terrorism Act was an Indian law intended to reduce terrorism in India. It was signed into law in 2002. This law reflected the policies and procedures of the Star Chamber in many ways. The law allowed for a suspect of terrorism to be detained for up to 180 days without requiring that officers submit the required paperwork to hold a person in detention. It also allowed law enforcement to withhold the identities of witnesses. These facts can be held from the media, and the freedom of the press can be restricted to reflect these rules if necessary. However the law did have one safeguard: a bail ruling or verdict from a Special Court constituted under this act could be appealed to a bench of two judges of the High Court of the same jurisdiction.

The Official Secrets Act

This Indian law was passed in 1923, and significantly changed the course of freedom of the press in India. The act remains valid to this day. The disclosure of any information that is likely to affect the sovereignty and integrity of India, the security of the State, or friendly relations with foreign States, is punishable with three to fourteen years in prison.

Unlike similar laws existing in the United States, this act does not in any way take intention into account. If you publish information which is secret or likely to help the enemy, you can be punished, regardless of whether you knew or intended for this information to help the enemy. Under this act, search warrants can be issued immediately by the magistrate to help police discover and catch leaks.

During court proceedings, the judge can disallow the media from accessing court proceedings and can prevent citizens from watching the trial if they believe that the information being discussed should not be disclosed any further. Additionally, the charges sought can be much broader than American laws would allow. While American laws would punish the journalist and/or the leak for publishing a story that would harm national security, under Indian law the editor, publisher, reviewers and proprietor of the newspaper can also be jailed.

The Associated Press Investigation

"The Justice Department's apparent purpose is to track down the person or persons who told AP about the Central Intelligence Agency's disruption of a Yemen-based terrorism plot. Federal prosecutors subpoenaed records for 20 separate office, home and cellular phone lines belonging to the AP and its reporters or editors. The subpoenas covered a two-month period in the first half of 2012. Crucially, they did not follow the usual Justice Department policy, which is to give news organizations a chance to negotiate or contest such a subpoena ahead of time."
– The Washington Post, May 14, 2013

After the Associated Press published information regarding the CIA's disruption of a Yemen-based terrorist plot, the Justice Department launched a criminal investigation into the Associated Press' information gathering tactics. Mainly this took place through a sweep of the Associated Press' phone records, however documentation also showed that the Justice Department completed hundreds of interviews and reviewed thousands of pages of the Associated Press' records. Federal authorities scrambled to discover who it was that had leaked this information to the press, and how they could be punished. Notably, this investigation was all secret. The Associated Press was not immediately notified that this investigation was taking place, and the investigation itself was hidden from the public, perhaps as an attempt to prevent the Streisand Effect. Attorney General Eric H. Holder Jr. stated that the Associated Press' story represented one of the top three greatest press leaks of all time, and thus the investigation had to stay a secret to prevent it from making headlines and to prevent the Associated Press from interfering or changing their phone records. This secret investigation was a violation of Justice Department policy and procedure, but Mr. Holder argued that this story posed a risk to all of the American people, and thus finding the leak had become a top priority at the Justice Department.

However, the Associated Press publicly disputed this claim. Gary Pruitt, the President of the Associated Press, told the media that he had held the story back from publication for quite some time. He had only allowed the story to run after he had been assured by the government that the security threat had passed and it was alright for the Associated Press to run the story. The White House was preparing to release this information to the public anyway, announcing that the CIA had successfully defeated a terrorist threat in Yemen.

This act by the Justice Department has been challenged time and time again, but no action has been taken to lessen the blow to the Associated Press, nor to keep similar actions from being taken in the future. In the public's eyes, it is commonly viewed as an unconstitutional violation of the freedom of the press and as a symptom of a self-contradicting bureaucracy.

Alien and Sedition Acts

I'm sure that you have already heard about the Alien and Sedition Acts, since they are covered by the vast majority of both history and civics classes, so I'll simply glaze over these. During the time just after the French Revolution, America was experiencing signs of hostility from France. Although war was never declared, it came to be known as the Quasi-war. Some believe that the French Revolution was partially responsible for minor revolution which then occurred between America's states and federal government. Some states refused to enforce federal laws, such as the Whiskey tax, and calls for succession reached record frequency. In order to prevent what was seen as a call for uprising and anarchy, John Adams signed into law the four different Alien and Sedition Acts. The overall effect of these acts was that anyone found to be speaking or writing against the federal government experienced extreme censorship and punishment for their work.

The Alien and Sedition Acts were widely controversial during their time. They were declared by Thomas Jefferson to be a gross infringement upon the most valuable rights protected by the first amendment. When Thomas Jefferson was elected president, he repealed the Alien and Sedition Acts.

New York Times Co v. United States

New York Times Co v. United States was a case which occurred in 1971. The *New York Times* had received copies of top-secret documents which had been leaked from the Office of the Pentagon. It moved forward with the intent to publish these papers, but was temporarily stopped by a lawsuit from the federal government. The argument was that these papers were secret and were necessary for the safety of the citizens of the country. They claimed legitimacy from the Espionage Act, which made it a crime to have unauthorized access to top secret documents. The government sought the authority to prevent these papers from being published, and the right to a restraining order to prevent the paper from publishing similar documents in the future.

This case went all the way up to the Supreme Court, where it was ruled that the *New York Times* did possess the constitutional right to publish these papers. The Supreme Court justices made their decision primarily by attacking the specificity of the Espionage Act. The exact wording of this clause of the act was as follows:

"Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it."

This seemed vague to the Justices. Are all matters of foreign policy issues of national security? If the *New York Times*' motivation was to educate the public, didn't that go to prove that the *New York Times* intended to do this country good and not harm? Did the *New York Times* have any reason to believe that these papers could harm the country, if published? In the end, the Justices found the clause to be too vague to uphold in this instance.

Additionally, it was determined that these particular documents held no legitimate claim to the authority of prior restraint. It was decided that this act only made it a crime for a person to possess these documents, not necessarily to publish them. And finally, the document itself did not make any reference to the fact that it was supposed to be classified. Thus the justices upheld the *New York Times*' right to publish these documents.

The precedent set by this decision was twofold. First, in order to justify prior restraint on a publisher's right to the freedom of the press, the government must provide clear and logical proof that the publication of such information would cause grave and irreparable harm to the public. Secondly, laws regarding the freedom of the press must be clearly written and clearly defined.

Espionage Act of 1917

Three weeks after it voted to formally declare war, Congress began the debate on how to handle the freedom of the press during this new wartime. These debates would become the Espionage Act of 1917. While the Act was primarily directed at espionage and domestic security, it included a controversial provision dealing with the freedoms of the press. This provision outlawed the publication of any information which may have been found to be helpful to the enemy.

Many representatives spoke out in favor of the bill, arguing that an unrestrained press would only harm national security and put the whole country at risk. Representative Edwin Webb of North Carolina defended this provision, arguing that, "in time of war, while men are giving up their sons and while people are giving up their money," the press should be willing to give up its right to publish what the president "thinks would be hurtful to the United States and helpful to the enemy."

However, the debate was not one-sided. Other representatives spoke against the bill, warning that once a violation of freedom has been allowed, there is no going back. They argued that we should not allow in wartime what we would not allow in times of peace. Representative Simeon Fess of Ohio warned that "in time of war we are apt to do things" we should not do. Republican Senator Henry Cabot Lodge of Massachusetts expressed concern that the government officials who would administer this provision would use their authority to stifle legitimate criticism of the government. Representative Medill McCormick of Illinois added that he was appalled to think that if an epidemic were to break out in the Army the proposed provision might empower the president to prohibit the press from "drawing public attention to the condition of the troops." The debates went back and forth for some time. By the end of them, supporters of the bill were willing to compromise. Another clause was added to the act, stating that: "nothing in this section shall be construed to limit or restrict any discussion, comment, or criticism of the acts or policies of the Government." However, opponents of the Act argued that it would be impossible to discuss whether the policies and secrets being kept from the public were justified if the press was not allowed to discuss those policies at all.

In the end, while the Act as a whole passed, the Press Provision was struck down by a vote of 184 to 144. This was the last discussion of press restriction during the war. In hindsight, experts consider it to be one of the most important steps our country took in protecting the freedom of speech.

Topic Breakdown

Cause and Effect

Blaire Bayliss

Have you ever wanted to read minds? Or look into the future? What about become invisible and spy on strategy meetings? Well then prepare yourself, because this article will be as good as any of that.

All debates, even values debates, ultimately come down to the question of cause and effect. If we do this, what happens? If we do that instead, does anything change? This article serves to provide you with a list of real world relationships between cause and effect. These are the policy outcomes that occur and the psychological phenomena that have been experienced after a decision between censorship and free press. Additionally, this article serves to highlight the main strategies behind any and every case combination and providing potential arguments against them, spiking your opponent's arguments before the season even begins. If you've ever wanted to see into the future to know what your opponent is going to do, just read on!

Censorship → A Wary Press

It's simple logic—when there are serious consequences for taking an action, people become more careful about taking that action. That's exactly what we see when we analyze the popular effects of press regulation—following censorship and/or heavy fines being imposed for failure to comply with the regulations, the press and the media become more careful about what they publish.

For example, the *New York Times* stated that it held its story regarding NSA wiretaps for almost a year before they were released and the Associated Press waited for government clearance before publishing a story on the conflict in Yemen.

While some may try to argue that the press is already weary and that journalists would never publish anything that would hurt their country, history serves to the contrary. Check out the Applications article for several examples of where the press made reckless decisions with national security secrets.

Censorship → The Streisand Effect

> The effects of censor characteristics and audiences' initial agreement with a censored communication on attitude change and desire to hear a communication were investigated. Subjects were informed that a communication taking a position with which they had originally agreed or disagreed had been censored. The censor was either an attractive or unattractive agent and his expertise on the topic of the speech was either high or low. The results indicated that in all cases except one, censorship led to an increased desire to hear the communication and attitude change toward the position of the communication.
> – *Journal of Applied Social Psychology*, July 31, 2006

The Streisand Effect is a psychological phenomenon by which people become more attracted to news stories after they are told that the stories have been banned, or contain information which they are not allowed to see. Sometimes called the Forbidden Fruit affect, people are attracted to things which they cannot have. News media is no different. The Streisand Effect was first discovered and named when singer Barbara Streisand attempted to ban and remove all pictures of her child from the media. After the paparazzi were told that the singer did not want these pictures to be taken, they tried that much harder to get pictures of her child…and the populace consumed the pictures with that much more frequency.

Censorship → The Turn of the Screw

No, censorship is not a famous novelette by a little known author. It is, however, considered by many to simply be a turn of the screw. The argument goes that once restrictions or measures are tightened during wartime, they will never be loosened again. Thus "snap decisions" or "knee jerk reactions" are heavily cautioned against, since they may very well change the course of policy as we know it and may well never be reversed.

This was the line of logic used by opponents of the Espionage Act. They argued that we must be careful to enact policies that we do not wish to keep, and must never enact laws in times of war that we would not enact in times of peace.

Censorship → The Rule of Law

The case of New York Times Co. v. United States detailed how censorship can uphold the rule of law. Government secrets and restricted documents are not allowed to be accessed by unauthorized entities. However, in the case mentioned, the Supreme Court of the United States ruled that the *New York Times* was allowed to publish these materials.

By allowing a newspaper to publish the materials, they allow even more non-authorized persons to access the material. In similar cases, by allowing the newspaper to publish the material, the newspaper was also not punished for owning and possessing these papers without authorization.

The Rule of Law is a philosophy which states that the law is king—no one is above the law. The law must be upheld, or else society will collapse. Censorship and/or press restrictions best uphold rule of law, since they best uphold the laws which are already in place.

Free Press → The Marketplace of Ideas

The Marketplace of Ideas was a concept championed by philosophers during the French Revolution. The idea was that so long as everyone is allowed to speak freely and provide their opinion on matters, the truth would eventually prevail. Under the interpretation of this resolution, that can specifically be seen in court. When the court makes a decision on freedom of the press vs. national security, many times it has to decide whether or not the printed materials had a significant effect on national security. If the threat is extreme and irreparable, harsher charges will be faced.

However, part of determining the effect on national security is finding out how many people read the article or information in question, and what the public response to that information was. In the event that this information faces prior restraint and is never published, determining the effect of the material in question is next to impossible. The marketplace of ideas is defeated, and court decisions are made based upon speculation regarding what could have happened. They lead the government to be overly-cautious, keeping the people in the dark for what is sometimes no reason at all. It prevents the people from having knowledge and understanding of their government, keeps governmental affairs hidden and promotes secrecy…sometimes for no reason at all. Freedom of the press upholds what should be the true standard for the government—there should only be secrets if it endangers the security of the nation in a clear and significant way. The Centre for Law and Democracy described this concept:

"The marketplace of ideas is defeated, and court decisions are made based upon speculation regarding what could have happened. They lead the government to be overly-cautious, keeping the people in the dark for what is sometimes no reason at all."

> In the context of the Principles, there are two purposes: defining the scope of information to which access may be refused on national security grounds (or, conversely, to which access must be provided); and as a key element in defining the circumstances in which individuals may be punished for releasing information relating to national security (i.e. setting the parameters for disclosures which may attract such punishment). These two purposes may be understood as two sides of the right to information: the right to access information and the corresponding obligation on public authorities to disclose that information (and consequent protection for doing so).

However, the same article discusses how in pragmatic and policy settings, this standard can be difficult to define and can sometimes be boiled down to nothing more than semantics.

> In other countries—such as Canada and the United Kingdom—classification is simply an internal direction to civil servants and is not determinative with respect to either a request for the information or the question of whether or not an individual may be punished for disclosing it. In the United Kingdom, for example, the main test for applying sanctions under the Official Secrets Act is whether a disclosure is damaging, while it is a defense if the person did not know and had no reasonable cause to believe that the information fell into the relevant category or would be damaging. In theory, this approach to classification should lead to decisions about openness being made on the merits of each case. In practice, however, it tends to be characterized by an absence of procedural protections, which results in over-classification. This, in turn, has a practical impact on decision-making regarding disclosure, even if legally it should not.

Free Press → Accountability

> First, there are what we might call "illegitimate" government secrets. In this category of secrets, government officials are attempting to shield from public scrutiny their own

> misjudgments, incompetence, misconduct, venality, cupidity, corruption, or criminality. In a self-governing society, it is vital that such secrets must be exposed.
> – Geoffrey Stone (Professor of Law) in *The Huffington Post*, May 21, 2006

The article goes on to talk about legitimate secrets—the ones the government has a reason for keeping, the secrecy of which helps to protect the nation and its citizens. But how do you tell the difference between legitimate and illegitimate secrets? Without public disclosure, there is no real way to tell the difference. Without investigation into the government's secrets, there is no way to know whether those secrets are legitimate or illegitimate. And without whistleblowers ready to alert the people whenever the government is keeping illegitimate secrets, the government could get away with any scandal, cover up or illegal action it wished. See the Applications page for examples of when these things have occurred in the past, and what the policy effects were.

Free Press → Tighter Security

How does the government know when it has a leak? How can they discover when someone is betraying their secrets? How can the government determine when their safety practices are insufficient?

The freedom of the press is one of the best ways to have your secrets revealed—but that's not always a bad thing. In some cases, having a minor secret leaked can prevent a larger leak from occurring in the future. In the case of Edward Snowden, his leak of the NSA's wiretapping practiced cause the NSA to re-evaluate their hiring practices as well as their cyber security practices. It caused experts to provide ideas and analysis on how the NSA could hide their secrets better in the future, and the current flight of Edward Snowden from America is causing authorities to find innovative new ways to get a criminal out of a foreign airport.

Freedom of the press typically means that national security is temporarily compromised. However, sometimes that temporary compromise to national security can pay off in the long run and ultimately help to protect national security.

> The history of the United States shows that, in spite of the varying trend of the foreign policy of succeeding administrations, this Government has interposed or intervened in the affairs of other states with remarkable regularity, and it may be anticipated that the same general procedure will be followed in the future. It is well that the United States may be prepared for any emergency which may occur…
> — U.S. Marine Corps, "Small Wars Manual" (1940)

The United States, in our relatively short history as a country, has amassed a long and elaborate history of foreign intervention. From 1800 to 1934, United States Marines staged no fewer than 180 foreign landings—a figure that reflects only part of the true expansiveness of US foreign intervention. Though the US's large wars (the Revolution, War of 1812, Civil War, Spanish-American War, World Wars, Korean War, and Gulf War) attract more major press and boast many of America's immortalized war heroes and stories, it's the small wars that have had a profound effect on the day-to-day fate of US interests abroad and the course of world affairs.

National Security and the Freedom of the Press

Trevor Heise

"…the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct."
— Justice William Douglas, New York Times Co. v. United States, 403 U.S. 713 (1971)

Here in the United States, free speech enjoys favored status as a near-sacred rite of American democracy. "I have a right to my opinion" rests right up there with "In God we trust" as a refrain of public debate and politicking. As one of the very few developed nations founded in its current form during the enlightenment, US history is thankfully empty of atavistic tyrants or old world politburos that could unilaterally criminalize publication. Our founding document is *itself* a revolutionary and seditious piece of writing. These historical influences have conspired to create a culture of free political speech in the United States.

But is there a darker side to revolutionary talk? Could totally unfettered freedom of speech put US troops in danger or reveal information so dangerous that its effects warrant prohibition? That's really the question at the heart of the resolution: where's the line between free speech and speech that's too dangerous to allow?

I. Resolutional Analysis

The resolution (Resolved: National security ought to be valued above the freedom of the press) requires a weighing of security against freedom—a classic Lincoln Douglas dilemma phrased in the *pro forma* dialogue of value debate. But Tesler's law (that complexity is constant) holds, and though there isn't a lot of surface complexity in the resolution, with its two simple terms up for weighing, there's a lot of complexity just below the surface: what's national security? what's freedom of the press? is the resolution referring to *some* freedom of the press or to absolute freedom of the press?

National security in a traditional sense means merely the survival of the nation-state. The idea implies a level of security and safety from attack and invasion, from threats both internal and external. The key distinction lies in the fact that the resolution juxtaposes freedom of the press with national security, implying that there's a zero-sum relationship between the two, meaning that *either* the state is secure via infringements on the freedom of the press, *or* that there's some real national security breach incurred as the cost of preserving the freedom of the press. Hence, negatives can't argue that the freedom of the press leads to national security through accountability, etc, to avoid biting loss of life arguments. Negatives can argue that, in the long run, a free press leads to a healthier and less corrupt, and, ultimately, more safe and secure democracy. But at least in the short run there's got to be some loss of life to fulfill the tradeoff the resolution is asking for. You aren't valuing one thing *over* another unless there's a cost to the

first in terms of the second. If both security and freedom are preserved entirely, no weighing of one over the other has to be/is done.

The semantics of “the freedom of the press” presents interesting contradictions as well. “Freedom” implies a right without hindrance, but it seems ridiculous to make the negative argue for a right without *any* limits, here. What if, for example, a publication run by a foreign enemy (the knee-jerk publication to bring up here, for some members of the American political demographic, is *Al Jazeera News*), started publishing confidential military secrets to damage the effectiveness of the US military?

So it is that the assertion of a freedom to publish also doesn’t say anything about the magnitude of the secrets or potential for damage of the information being published. We might consent to news agencies publishing mildly secret information that could cause a couple CIA job losses, but it’s doubtful that they American public would be at peace with the publication of nuclear launch codes or something of equally apocalyptic significance. There’s *no strictly textual* way to define the freedom of the press; it’s a term that must be defined empirically—keeping in mind nuances of usage, law, and circumstance.

“The freedom of the press” includes a further ambiguity about what the “press” actually is. Is “the press” a formal journalistic institution, or merely a lone wacko with a Twitter account? Given the way technology and crowdsourcing are blurring the lines between traditional and new media, is there *even a difference* between a formal journalistic institution and a lone wacko? And, if there still is a difference, where’s that line?

All these need to be taken into consideration when defining the freedom of the press as they have profound implications on where the debate goes. The Supreme Court has based lots of its pro-journalistic-freedom and anti-prior-restraint precedent on the assumption that responsible news organizations will avoid publishing anything that would too-severely damage US national security or put US citizens or soldiers in danger. That justification evaporates when “the press” means, not traditional news media organizations with reputations and fact-checking departments and commercial interests and legal teams, but rather merely solitary activists with wiki pages housed on foreign servers.

Finally, the resolution implies a few constraints of space and time. The resolution must be supposed to be dealing with democratic, freedom-respecting states that are in some basic sense “good” and at least aren’t *trying* to kill their citizens or do significant damage abroad. This is because, if the resolution were construed to apply to rogue states or to state sponsors of terror, negatives could argue that those states’ national security interests don’t *deserve* to be respected, and that, in fact, those states ought to be weakened and collapse and suffer regime change. Such conditions would reverse the rules and provide two opposite answers, each obviously correct, to the resolution—a situation where debate reaches an impasse.

Debate must occur around, and in reference to, some kind of “real” media. Few would argue that a state doesn’t have the right to prevent *enemy* forces from revealing national security-related secrets, or that information classification and the punishment of its release wouldn’t be justified as part of a war. So the press at issue here have to be taken to be some kind of traditional media, operating in at least a facsimile of good faith, in a not-totally-hostile situation. That still leaves a lot of room for disagreement, but does set, I think, an outer limit for what the resolution means by “the press.”

The sum of these limits is an overall conclusion that the debate can't be a categorical. We're not dealing with a literally absolute freedom of the press, or a totally expansive definition of the press itself, or press operating in *any* state, but rather with more moderate versions of those concepts. So the debate this year has to be empirically driven, with terms defined according to contemporary norms. This year's resolution isn't theoretically exact, and so there isn't, and never could be, a logically provable "right" answer here, but we can still draw lessons from past experiences, and loosely define terms to work towards general answers to these policy questions.

II. History: Here and Abroad

Before Henry VII, the rulers of England had banned particular books and publications by *ad hoc* edict, but didn't have a formal system of censorship. Most banned material was so suppressed because of its alleged seditious content and/or purpose, but didn't have implications for national security of the type with which we're familiar today. The pre-Henry VII system of censorship changed when the monarch issued a Proclamation in November of 1538 which mandated that *"no book 'in the English tongue' be imported into or printed in England without a license (a right to copy) granted in advance by the King or his designated administrators. Whereas prior decrees had… even required, in 1530, prior licensing for any books 'concernyange holy scripture', the Proclamation was the first national book-licensing regime instituted in England." (Joseph S. Jenkins, "Copyright Law and Political Theology: Censorship and the Forebear's Desire" Law and Literature, Vol. 25, No. 1 (Spring 2013), pp. 65-84, University of California Press).*

The ostensible reason for the legal change was to protect the *"simple loving subjects,"* [sic] from falling prey to religious error. To err, it seems, is human; to not err because your monarch's looking out for you, is British.

Henry VII-era restrictions on publication ran their course and, by the time of William Blackstone in the 18th century, become largely obsolete. Blackstone is the famous British jurist who authored the *Commentaries on the Laws of England*, the authoritative collection of his country's legal practices and principles. In it, Blackstone laid down the legal and political basis for the freedom of the press that continues through the present, arguing, *"The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity." (4 Bl. Com. 151, 152.)*

Blackstone's dictum says that individuals must be allowed to publish what they want, but that they must also bear the consequences of publications that are libelous, dangerous, or improper. Blackstone also assumed that people shouldn't be allowed to publish or say things, even true things, if their intention was malicious or "mischievous" or otherwise improper.

We've since done away with the latter restrictions, and you can now say anything you want, even if it destroys someone's reputation, so long as it's true (excepting, of course, cases in which you're under an obligation from contract to not divulge secrets or cases in which there's a

potential harm to national security [though even that case is extreme and, as we'll see later, hasn't ever been ultimately upheld by the judiciary in the United States]). But in Blackstone's time, you had to watch what you said and try to not be mischievous.

Prior restraint censorship persisted in Tsarist Russia until 1906, after which the press enjoyed a brief window of a kind of freedom before being subjected to the stifling penumbra of the Soviet gulag and its punishments for political prisoners. *"The Chief Administration for Press Affairs [Glavnoe upravlenie po delam pecati] in the Ministry of the Interior supervised all printing and publishing within the Russian empire and the Kingdom of Poland, as well as printed matter entering from abroad. The Chief Administration scrutinized 'books of all kinds in all languages, prints, drawings, and other representations with text or without, designs, plans, cards, and musical compositions with words appended'. Periodical publications, dramatic works, and the theatre also were entrusted to its care. Full power to confirm or to withhold approval to publish, and to institute legal action in the cases provided by law, was granted the Chief Administration." (Benjamin Rigberg, "The Efficacy of Tsarist Censorship Operations, 1894—1917," Jahrbücher für Geschichte Osteuropas, Neue Folge, Bd. 14, H. 3 (SEPTEMBER 1966), pp. 327-346).*

The system in Russia continues in the form of Putin's restrictions on the advocacy of homosexuality, state-encouraged harassment of political dissent, and censorship of even literary and cultural works like theater productions of Nabokov's *Lolita*. To me, Russia is an apt illustration of at least a couple of principles: the continuing and chilling effect of censorship on free speech, and the fact that, over the long term, prohibitions on free speech for the sake of national security don't have that great of a payoff.

Censorship in Western Europe also boasts a rich and colorful history, largely derivative of the countervailing power claims of mutually raiding monarchs. France's Francis I required the verification of religious books for theological accuracy, and the 16th century Edict of Châteaubriant prohibited the possession of any books on Francis' censors' banned books list. For European monarchs, censorship was largely about snuffing out religious "heresies" and, for the French, it's always contained an element of cultural snootiness—the preservation of prescriptivist notions of French grammar and culture and fidelity to source text. Further justification for prohibitions on publication was found in the need for maintaining a grip on monarchial power; the idea of censorship for reasons of "national security" is fairly historically novel.

If there's an overriding message here, it's that looping in examples from pre-19th century history, or thereabouts, of censorship and prior restraints, should be done with caution since such restraints weren't usually levied for purposes that would be resolutionally applicable.

Eclipsing the denizens of an archaic old world order, China probably put in the winning bid for the title of most draconian 21st century censor. Freedomhouse offers a punchy summary of China's censorship practices in a recent report:

> "*China has emerged as the nerve center and leading exemplar of what might be called 21st-century authoritarianism. Unlike its 20th-century predecessors, the Chinese system is designed to permit a wide range of social and personal freedoms, and has a considerable tolerance for market economics, albeit with a substantial degree of state intrusion and a staggering amount of corruption. Such selective openness is coupled*

with the ruthless suppression of any and all perceived threats to the Communist Party's monopoly on political power. To this end, the Chinese leadership has developed a pervasive, sophisticated, and highly adaptive mechanism for information control that is meant deny access to "subversive" views while amplifying the party's message on current affairs. There are limits to the censors' efficacy, and many Chinese internet users are quick to exploit any weaknesses. Nevertheless, in its technical intricacy, its success at placing censorship responsibility on journalists and the managers of both old and new media delivery systems, and its access to billions of dollars in resources to ensure the proper filtration of news reaching the general public, the Chinese information system represents authoritarian rule at its most modern, nuanced, and efficient."

The important thing to understand about Chinese censorship is that it's predicated on an entirely different notion of "security." China and other authoritarian countries premise national security on ideas of a top-down model of national organization, a thorough, all-encompassing method of manipulating people and the flow of information to achieve maximum stability. Take Burma as an example of the extreme of the theory, a country where media organizations spent this spring working on resuming publication after a 50-year ban on newspapers.

Western democracies see "security" primarily as an addition to an otherwise free society, an aura of government secrecy surrounding military and defense mechanisms designed to supplement the underlying strength of a robust and free model of national organization.

Such examples hopefully illustrate the difficulty of drawing comparisons across radically different countries in the context of the resolution. It's very difficult to evaluate a statement that sets national security against the freedom of the press while summoning such diverse examples as those of both the United States and China. The idea of *even needing to debate the freedom of the press* really only makes sense in terms of liberal democracies—that the governments of Russia, China, etc, need to err more on the side of valuing freedom of the press over *their* conceptions of national security is so obvious as to rule them out of the arena of fair, acceptable examples. This last point is crucial and will, I believe, save you from a lot of pointless and ridiculous and unfair debates.

America's experience with free speech is actually pretty unique, as has been alluded to, since we're the only country that's been entirely formed, founded, fashioned and peopled, during and after, and in the spirit of, the enlightenment. Without a history of tyrant-imposed restraints on publication on which to draw, the United States has generally been pretty good about respecting journalistic independence.

The United States Constitution's protections of free speech, enshrined in the first amendment, are derivative of Blackstone's idea of no prior restraints. Largely taken from Virginia's Declaration of Rights, the amendment reads: *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."* The part we're interested in is the latter, with its restrictions on the abridgement of the freedom of the press.

The First Amendment was inspired by Enlightenment ideas about free thought and discussion, and motivated in no small part by miscegenation in the early colonies, which ruled out rule by a

monolithic theocracy. Our thirteen colonies were simply too diverse to be ruled by any one ideal, so the only solution was to protect the expression of a diverse number of ideas.

Protection of the freedom of the press in the United States, however, has not always been so perfect. In 1798, during a series of naval skirmishes with France, the Federalists under John Adams passed the *Alien and Sedition Acts*, a series of several laws that increased the residency requirements for US citizenship and criminalized speech critical of the government. The *Acts* were intended to weaken the Democratic-Republican Party and were fiercely denounced by Thomas Jefferson and James Madison, among others. Though some were prosecuted under the *Acts,* those still serving sentences were pardoned by Jefferson once he became president, and the *Acts* themselves were allowed to lapse in the very early 1800s—rendering them a minor detail of US history and not a very precedent-setting affair.

"It's impossible to ascribe an intention to 'the founders' because they were an ideologically diverse group of people who had different takes on different problems, and as such, didn't have an opinion as a group."

The *Alien and Sedition Acts* episode does illustrate an important historical principle, though: the US founders didn't always agree. Beware this year of arguments from "originalism," that "the founders" would have wanted us to do this or that. It's impossible to ascribe an intention to "the founders" because they were an ideologically diverse group of people who had different takes on different problems, and as such, didn't have an opinion as a group. So you can argue what *this or that particular founder* wanted, but can't say what "the founders" as a bloc would think. For example, the statement "the founders supported the *Alien and Sedition Acts"* is a nonsensical statement — some did support the *Acts*, and some didn't. Furthermore, they lived centuries ago in an age without nuclear weapons, electronic mass-communication, or hegemonic global superpowers, all of which are key differences that fundamentally alter how one deals with national security threats.

III. National Security and the Freedom of the Press in the United States

The tradeoff between national security and the freedom of the press in the United States has made a lot of history in the last century. That history, I believe, is best explored through the Supreme Court cases it's given rise to. Notable restrictions on press freedom for the sake of national security almost always involve litigation that works its way to the Supreme Court—providing an opportunity for a broad but thorough survey of the relevant issues and arguments. Furthermore, Supreme Court decisions are dense in referential meaning and replete with quotes from founders, jurists, scholars, all of which are incredibly helpful as materials for quoting in debate. Read the full decisions of the cases discussed below, and learn more about the surrounding circumstances and related legal issues.

A. NYT v. United States (1971)

The New York Times versus the United States is the single most important case in the history of US law on journalistic freedom and national security. It's the closest the United States ever was to restraining the publication, by a respected national news organization, of national security secrets, and set the high bar that still holds today for such prior restraint. Though there's no official "opinion of the court" (that's what *per curium* means), the individual opinions of the

justices contain absolutely wonderful quotes and material for debate—reading the decisions and taking down quotes is a must. Here's the story of the case.

During the Vietnam War, then Defense Secretary Robert McNamara commissioned a sweeping report chronicling the history of US involvement in Vietnam since 1945. Leaked to *New York Times* reporter Neil Sheehan through an aide, the pilfered report was dissected by the Times over a period of several months, and segments were made available to the public in a front-page story in June of 1971. In response, the Attorney General sought an injunction against the *Times* to halt further publication, which led to a remarkable legal battle that eventually fought its way to the Supreme Court.

The Court found in favor of the *Times* in a fractured 6-3 per curium decision, with each Justice writing his own opinion. As a result, the case has failed to yield a straightforward precedent. However, the general feeling of the majority was simply that the injunction had not surmounted the "heavy presumption against" prior restraints.

Focusing on the role of the press as a check on government corruption and abuse, Justices Hugo Black and William Douglas argued that an unfettered press is a vital component of our democracy. Justice Black even went so far as to contend that the purpose of the First Amendment was to establish the press as a censor on the government—rather than the other way around.

Citing the Espionage Act of 1917, the Court emphasized that Congress had specifically declined to grant the president power to restrain publication of documents deemed harmful to national security. The Court felt that it lacked the authority to grant, to the executive branch, power that Congress had specifically declined to give.

In his dissent, Justice Warren Burger considered the *Times'* claim that it's "journalistic 'scoop'" gave it a "sole trusteeship" of "the public 'right to know.'" The *Times* argued that it was the proper role of an empowered and unfettered press to ferret out information relevant to the public discourse and to present it to the people—thus acting as the trustee of the public's right to know. It was important that the *Times* be the sole trustee of this right because a government deciding what information is released to the public can't act as a meaningful check on itself. Like the henhouse guarded by a fox, a press subject to government restraint wouldn't be able to ply meaningful accountability to its public officials.

The *Times* stressed that it was fulfilling a public "right to know," implied by the First Amendment, as a means of bolstering its claim against prior restraint. Criticizing the claim that the public right to know is an absolute, Justice Burger argued that the First Amendment itself is subject to exception—particularly when lives are at stake. The majority disregarded Burger's argument, instead belaboring the point that the First Amendment tolerates no exception. But perhaps they would have been more likely to conjure up an exception to the First Amendment if the release of the documents in question had seemed more likely to precipitate a national security catastrophe.

B. US v. Schenck (1919)

Charles Schenck was the Secretary of the Socialist Party of America campaigning against the draft by mailing circulars, written in Yiddish, urging repeal of the Conscription Act. He was charged with violating the Espionage Act by urging insubordination. The Supreme Court, in an opinion written by the awesome-beard-having Oliver Wendell Holmes, issued a watershed opinion that enunciated what's called the "clear and present danger" test.

> *"…the character of every act depends upon the circumstances in which it is done. Aikens v. Wisconsin, 195 U.S. 194, 205, 206. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 439. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right."*
> *– Justice Oliver Wendell Holmes (Opinion of the Court), United States v. Schenck 249 U.S. 47 (1919).*

Of course, there wasn't much danger that a foreign socialist, mailing pamphlets in an obscure language spoken only in German Rhineland by a minority group, would singularly exert enough influence to seriously jeopardize the United States' recruiting for the World War I, but the court's opinion stood…for the time being.

C. Near v. Minnesota (1931)

A Minnesota statute, which provided that publishers of "malicious, scandalous and defamatory newspaper, magazine or other periodical" articles are guilty of nuisance and libel, was applied to the publisher of a magazine alleging corruption among local officials, the publisher sued Minnesota and won. In his majority opinion, Chief Justice Hughes quoted Madison's argument that, *"the great and essential rights of the people are secured against legislative as well as against executive ambition. They are secured not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative restraint also."*

The case confirmed that prior restraints on publication are presumed to be unconstitutional and can be justified only under strict scrutiny. Hughes also quoted Blackstone in a wide-ranging opinion, rich in historical allusion and argument.

D. Gorin v. United States (1941)

Gorin v. United States is a landmark case that dealt with the application of the Espionage Act to foreign nationals. Hafis Salich was an employee of the US Navy and was charged with selling Mihail Gorin, a Soviet national, secrets about the Japanese procured in the United States. The two were convicted under the Act of Espionage. The Espionage Act is significant as it is the law

that's being used to prosecute NSA leaker Edward Snowden, and Wikileaks source Chelsea Manning.

The Espionage Act has been deeply controversial due to its alleged ambiguity—"vagueness" is the word that usually gets thrown around in court proceedings and academic discussion. The case is notable in it's affirmation that the Act is not overbroad and is, hence, not unconstitutional on that count:

> *"But we find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law. 13 The obvious delimiting words in the statute are those requiring 'intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation.' This requires those prosecuted to have acted in bad faith. The sanctions apply only when scienter is established. 14 Where there is no occasion for secrecy, as with reports relating to national defense, published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign government. Finally, we are of the view that the use of the words 'national defense' has given them, as here employed, a well understood connotation."*
> *– Gorin v. United States 312 U.S. 19 (1941)*

E. Nebraska Press Association v. Stuart (1976)

A Nebraska state trial judge was presiding over a widely publicized murder trial when he entered an order restricting members of the press from publishing accounts of confessions made by the accused to the police, or other information "strongly implicative" of the accused. He did this to protect the 6th Amendment right to a fair trial. The Supreme Court heard the case on behalf of the Nebraska Press Association and decided that the publication of such material wouldn't jeopardize the defendant's right to a fair trial. This case makes my list here because, in a dissent, Supreme Court Justice Brennan makes a hugely important argument epitomized in statement below: that the Court's precedent that there's a heavy *presumption* against prior restraint implies that there are *some conditions* where such a restraint would be allowed. If not, why have a *presumption* against prior restraint and not just ban the thing outright? The court in it's majority opinion also went on to enunciate a three-part test for determining the Constitutionality of a prior restraint that takes into account, A) the nature and magnitude of the harm, B) the effectiveness of a prior restraint, and, C) whether there are other methods for avoiding the harm that don't involve a prior restraint.

> *"…relying on dictum in Branzburg v. Hayes, 408 U.S. 665 (1972), [n9] and our statement in New York Times Co. v. United States, 403 U.S. 713 (1971), that a prior restraint on the [p583] media bears "'a heavy presumption against its constitutional validity,'" id. at 714, the court discerned an "implication" that, if there is only a presumption of unconstitutionality, then there must be some circumstances under which prior restraints may be constitutional, for otherwise there is no need for a mere presumption."*
> *– Supreme Court Justice William Brennan (dissent), Nebraska Press Association v. Stuart 427 U.S. 539 (1976).*

IV. Current Controversies

Though you might think that the digital era means more freedom for journalists and their sources, that doesn't appear to be the case:

> *"Media freedom in Europe is deteriorating. According to a report presented to the Council of Europe, a pattern of violence and legal abuses directed at journalists has begun to take root in several European countries, threatening to stifle free, independent media with censorship and intimidation.*
>
> *Since late 2009, at least 17 journalists have been killed or abducted in Europe in the course of their work.*
>
> *According to the South East Europe Media Organization (SEEMO), which monitors 20 countries in Eastern and Southeastern Europe, "pressure on journalists continues, and self-censorship appears to be the norm." Meanwhile, the unwarranted blocking and filtering of Web sites has grown more common in many countries, as has aggressive surveillance of Internet users."*
>
> *– William Horsley and Mats Johansson, "Europe's Wounded Press Freedom," Project Syndicate, July 2012.*

Such evidence is concerning, and raises questions about how to protect journalism in a digital age when the line between protestors and journalists can be blurred through social media and online activism. As social media enables *the people* to become *the press,* it's increasingly true that the "freedom of the press" is inseparable from political and social freedom in general.

And then, of course, there's Wikileaks. Wikileaks is an online, nonprofit organization that's made available a broad range of secret documents, including documentation of expenditures on equipment in the war in Afghanistan, secret Scientology documents, footage from the 2007 US airstrike that killed Iraqi journalists, hundreds of thousands of documents related to the Iraq War, secret files relating to the Guantanamo Bay detention camp, etc. A number of these documents were provided by Chelsea Manning, a former intelligence analyst for the United States in Iraq, who accessed databases to copy secret documents. Manning was prosecuted under the afore-discussed Espionage Act and will serve at least eight years in prison.

Though it's the Manning case that gets all the press, a larger shift in US law relating to national security and press freedom is taking place elsewhere. The *New Yorker* describes the shift, as evidenced in Attorney General's handling of a recent case:

> "*In 2008, Bush Administration officials opened a grand-jury investigation of Jeffrey Sterling, a former C.I.A. case officer, for being Risen's source on Operation merlin. In 2010, the Justice Department, under Obama's Attorney General, Eric Holder, charged Sterling with providing classified information to a journalist; Sterling pleaded innocent. Holder then endorsed a subpoena that would force Risen to reveal his sources at Sterling's trial.*
>
> *In 2012…Holder approved an appellate brief that marked a low point in recent First Amendment litigation. It rejected any notion of a reporter's constitutional privilege to*

> *protect sources in criminal proceedings. It dismissed the idea that reporting like Risen's might be justified because it serves the public interest. And it described a working reporter who hears classified information during an interview with a government official as a witness to a crime, under the Espionage Act of 1917—no different under criminal law from a witness to a murder. "*
> *– Steve Coll, "A Test of Confidence,"* The New Yorker*, September 2013.*

The situation becomes particularly concerning in light of the fact that Holder has approved more investigations of media leaks than all other Attorneys General combined. The revelation that the DOJ had been seizing phone records from the Associated Press and a Fox News journalist didn't help either. These increases in prosecutions, however, probably aren't just products of an increasingly tyrannical administration, much as critics on the political Right would like you to believe, but rather reflect a growing reality of the digital age: that with instantaneous communication and digital access to information it's going to become easier and easier to leak and publish classified information. This is an issue that's not been well resolved yet and will certainly require some intellectual legwork.

It's also important to keep in mind that, though the ostensible reasons for restrictions on publication often appeal to high-minded notions of national security and the public good, the reality of censorship is often political. Take, for example, the case of the Pentagon Papers. The government's said justification for preventing publication was nothing but a bad disguise for the underlying wish to prevent embarrassing information from getting out and compromising the political positions of the "powers that were." The Vietnam War was a failure, and everyone knew it. But the Pentagon Papers proved, beyond even the not-inconsiderable obfuscatory abilities of politicians, that the politicians themselves *knew* that the Vietnam was a failure.

Now that's not necessarily the story with all restraints. There are conceivably cases in which national security could be on the line and publishing, for example, as was discussed in *NYT v. US*, the locations of troop transports in enemy waters, would be impermissible. But these cases are few and far between. The bar is set pretty high to warrant an infringement on the freedom of press in the interests of national security.

And that gets to a crucial point of the debate: what *is* the limit? It's unreasonable to say the press ought to be able to publish literally anything (see the examples of an "enemy press" from earlier), but on the other hand almost no one would argue for censorship anytime anyone published anything that could compromise the US's military position—can you imagine what an obsequious, (literally) militant press that kind of stance would leave us with? So we're left with a question that's pretty empirical. Answering it will require study and a substantial conversance with the literature.

Keep in mind, too, the changing nature of technology and media. As discussed earlier, it's difficult to pin down a concrete definition of "media" in the first place, at least for the operative purposes of a debate like this. And as technology changes the tradeoff between press freedom and national security, old arguments are going to need revision in light of new factual realities. These are the interesting opportunities posed by this resolution and the areas where I'd direct your further study.