Philosophies of the Resolution
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Legal codes coalesce around the notion of *precedent*—the notion that previous legal decisions inform the interpretation of current case quandaries. When scrutinizing criminal procedure, one quickly becomes mired in the minutiae of legal precedent and the innumerable iterations of the conflict between truth-seeking and individual privacy (attorney-client privilege, the exclusionary rule, search warrants, etc.). Beneath this vast array of real world applications reside underlying moral theories—the frameworks in which truth-seeking and individual privacy acquire their relative value. To debate this year’s resolution, you must understand transcendent principles, not just precedent.

# A Primer on Moral Theory

Justice. Human Dignity. Human Rights. Quality of Life. Societal Wellbeing. If you have competed in LD for more than two tournaments, you’ve likely been exposed to the panoply of external standards debaters employ to adjudicate between the two concepts in a comparative resolution. The “value” bears its moniker because it adds a dimension of value to the debate round: In isolation, we cannot determine whether truth-seeking or individual privacy is more important. When we insert the value of Human Dignity and see that individual privacy safeguards a fundamental facet of personhood, we subsequently apprehend the superiority of individual privacy over truth-seeking in criminal procedure.

What, however, renders *values* valuable? Why do we exalt notions like Human Rights and Justice as standards?

To answer those questions, we must probe the underlying moral theories which define the value of our values. In the process, we’ll discover that the two primary ethical frameworks—deontology and consequentialism—inform our understanding of truth-seeking and individual privacy as well.

## Deontology

Derived from the Greek roots *deon* (meaning “duty”) and *logos* (meaning “word,” “law,” or “science”), deontology refers a category of ethical theories which posit that moral worth resides in actions, not results.[[1]](#footnote-1) In other words, what makes your action moral or immoral is simply your action itself. Lying is wrong because one’s moral duty is to tell the truth. Murder is wrong because it contravenes one’s moral obligation to humanity. Seems self-explanatory? A guide to ethics published by the University of Texas concurs:

“Deontology is simple to apply. It just requires that people follow the rules and do their duty. This approach tends to fit well with our natural intuition about what is or isn’t ethical.”[[2]](#footnote-2)

The *Stanford Encyclopedia of Philosophy* illustrates deontology with this thought experiment: “A surgeon has five patients dying of organ failure and one healthy patient whose organs can save the five.”[[3]](#footnote-3) Deontology would dictate that one must allow the five patients to die, because killing the healthy patient is an immoral action, whereas the surgeon is not responsible for the results of the five patients dying. The revolutionary eighteenth-century philosopher Immanuel Kant was the progenitor of this philosophy (in his *Groundwork for the Metaphysics of Morals*):

“Kant held that nothing is good without qualification except a good will, and a good will is one that wills to act in accord with the moral law and out of respect for that law rather than out of natural inclinations. He saw the moral law as a categorical imperative—i.e., an unconditional command—and believed that its content could be established by human reason alone. Thus, the supreme categorical imperative is: ‘Act only on that maxim through which you can at the same time will that it should become a universal law.’ Kant considered that formulation of the categorical imperative to be equivalent to: ‘So act that you treat humanity in your own person and in the person of everyone else always at the same time as an end and never merely as means.’”[[4]](#footnote-4)

## Consequentialism

Often imagined as the opposite of deontology, consequentialism encompasses moral systems which assert that normative value inheres in an action’s consequence, rather than the action itself. Put simply, the status of “good” or “bad” depends exclusively on the ramifications of an action. Genocide is wrong because it accrues negative results, like a net decrease in collective happiness. Lying, on the other hand, may or may not be wrong depending upon how many people it affects.

Let’s revisit the *Stanford Encyclopedia of Philosophy*’s thought experiment (“A surgeon has five patients dying of organ failure and one healthy patient whose organs can save the five”[[5]](#footnote-5)). The consequentialist harvests the organs from the healthy patient to save the imperiled lives of the five. For the consequentialist, the advantage of five lives saved outweighs the disadvantage of one death.

Although consequentialism ironically engenders some unpalatable consequences, various interpretations provide positive perspectives. For example, John Stuart Mill proposed “a revised version of utilitarianism [another name for consequentialism] called rule-utilitarianism. According to rule-utilitarianism, a behavioral code or rule is morally right if the consequences of adopting that rule are more favorable than unfavorable to everyone. Unlike act utilitarianism, which weighs the consequences of each particular action, rule-utilitarianism offers a litmus test only for the morality of moral rules, such as ‘stealing is wrong.’”[[6]](#footnote-6)

The *Stanford Encyclopedia of Philosophy* enumerates myriad modes of consequentialism, each differing in how they account for and evaluate consequences.

“Consequentialism = whether an act is morally right depends only on consequences (as opposed to the circumstances or the intrinsic nature of the act or anything that happens before the act).

Actual Consequentialism = whether an act is morally right depends only on the actual consequences (as opposed to foreseen, foreseeable, intended, or likely consequences).

Direct Consequentialism = whether an act is morally right depends only on the consequences of that act itself (as opposed to the consequences of the agent's motive, of a rule or practice that covers other acts of the same kind, and so on).

Evaluative Consequentialism = moral rightness depends only on the value of the consequences (as opposed to non-evaluative features of the consequences).

Hedonism = the value of the consequences depends only on the pleasures and pains in the consequences (as opposed to other supposed goods, such as freedom, knowledge, life, and so on).

Maximizing Consequentialism = moral rightness depends only on which consequences are best (as opposed to merely satisfactory or an improvement over the status quo).

Aggregative Consequentialism = which consequences are best is some function of the values of parts of those consequences (as opposed to rankings of whole worlds or sets of consequences).

Total Consequentialism = moral rightness depends only on the total net good in the consequences (as opposed to the average net good per person).

Universal Consequentialism = moral rightness depends on the consequences for all people or sentient beings (as opposed to only the individual agent, members of the individual's society, present people, or any other limited group).

Equal Consideration = in determining moral rightness, benefits to one person matter just as much as similar benefits to any other person (= all who count count equally).”[[7]](#footnote-7)

# Connections to the Resolution

## Individual Privacy

Because individual privacy is classically defined as a right, it is clearly predicated on deontology. According to the Hafia Center for Law and Technology,

“The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose.”[[8]](#footnote-8)

Samuel Warren and Supreme Court Justice Louis Brandeis articulated this deontological paradigm of privacy in their seminal 1890 article, defining individual privacy in terms of “the right to be let alone.”[[9]](#footnote-9) As moral entitlements, rights exact certain obligations. If one has the right to liberty, one is morally entitled to exercise that liberty free from external constraint or coercion imposed by any other individual. Consequently, other people possess the deontological obligation not to interfere with liberty. The same principle applies to individual privacy. If “the right to be let alone” is an individual right, then other people and governments have a deontological duty to abstain from trespassing it. Otherwise, one’s dignity is gravely violated.

Individual privacy also has consequentialist justifications, though. The Hafia Center for Law and Technology notes that privacy is beneficial for providing “peace of mind,” facilitating “freedom of speech” and of expression, “enabling equality and bridging the social divide,” and preserving democracy.[[10]](#footnote-10) Furthermore, Warren and Brandeis acknowledge in the bulk of their article that privacy functions as a bulwark against undesirable intrusion from journalists and governments. Clearly, individual privacy has pragmatic purposes, rendering it morally justifiable under a consequentialist moral framework.

## Truth-Seeking

Like individual privacy, truth-seeking involves both deontological and consequentialist philosophical justifications. On the deontological end of the spectrum, truth-seeking pertains to upholding the fundamental purpose of the criminal justice system:

“We must remember that criminal trials serve more than one purpose. The first and most obvious purpose of criminal trials is to ‘search for truth.’ We want the innocent to be acquitted and the guilty to be convicted. Much of what we do before, during and even after criminal trials is quite appropriately designed to further this ‘search for truth.’”[[11]](#footnote-11)

Criminal justice officials possess a moral duty to uphold their purpose, and unduly prioritizing individual privacy impedes this purpose. For justice to be delivered, the justice system must obtain all the facts, which potentially endows the criminal justice system with a moral obligation to value truth-seeking above individual privacy.

Consequentialist justifications for truth-seeking pertain to maximizing protections for the innocent, both in the justice system and in society. Truth-seeking expresses the paramount commitment to uncovering all the relevant facts and data, which potentially serves to safeguard and acquit those falsely convicted. After all, the more data the criminal justice system acquires, the more liable they are to make a properly informed decision, which pragmatically protects the innocents within the system. Additionally, prioritizing the discovery of truth benefits the innocents within society, as privacy rights can enable the guilty to escape the system and reenter society unreformed, equipped to perpetrate more offences. Valuing truth-seeking prevents such egregious abuses through exhibiting all relevant content and ensuring the guilty are brought to justice, thereby protecting society.

# Conclusion

Moral theories matter when discussing truth-seeking and individual privacy. Don’t neglect them in your debates.

1. “Deontological Ethics,” *Encyclopedia Britannica*, 27 December 2017, <https://www.britannica.com/topic/deontological-ethics> [↑](#footnote-ref-1)
2. “Deontology,” *Ethics Unwrapped*, University of Texas. <http://ethicsunwrapped.utexas.edu/glossary/deontology> [↑](#footnote-ref-2)
3. Larry Alexander and Michael Moore, "Deontological Ethics", The Stanford Encyclopedia of Philosophy (Winter 2016 Edition, <https://plato.stanford.edu/archives/win2016/entries/ethics-deontological/> [↑](#footnote-ref-3)
4. Deontological Ethics,” *Encyclopedia Britannica*, 27 December 2017, <https://www.britannica.com/topic/deontological-ethics> [↑](#footnote-ref-4)
5. Larry Alexander and Michael Moore, "Deontological Ethics", The Stanford Encyclopedia of Philosophy (Winter 2016 Edition, <https://plato.stanford.edu/archives/win2016/entries/ethics-deontological/> [↑](#footnote-ref-5)
6. James Fieser, “Ethics,” *Internet Encyclopedia of Philosophy*, <https://www.iep.utm.edu/ethics/#SH2c> [↑](#footnote-ref-6)
7. Walter Sinnott-Armstrong, "Consequentialism", *Stanford Encyclopedia of Philosophy* (Winter 2015 Edition), <https://plato.stanford.edu/archives/win2015/entries/consequentialism/> [↑](#footnote-ref-7)
8. Yael Onn et. al., “Privacy in the Digital Environment,” *Hafia Center for Law and Technology* (2005), <https://books.google.com/books?id=yeVRrrJw-zAC&pg=PA1&dq=right+to+privacy+tel+aviv&hl=en&ei=T0IhTaWhEI-msQOizMWZCg&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCwQ6AEwAQ#v=onepage&q=right%20to%20privacy%20tel%20aviv&f=false> [↑](#footnote-ref-8)
9. Samuel Warren and Louis Brandeis, “The Right to Privacy,” *Harvard Law Review* 4, no. 5 (1890), <http://faculty.uml.edu/sgallagher/Brandeisprivacy.htm> [↑](#footnote-ref-9)
10. Yael Onn et. al., “Privacy in the Digital Environment,” *Hafia Center for Law and Technology* (2005) [↑](#footnote-ref-10)
11. Craig Bradley and Joseph Hoffman, “Public Perception, Justice, and the ‘Search for Truth’ in Criminal Cases,” *Articles by Maurer Faculty at the University of Indiana School of Law*. Paper #507. <http://www.repository.law.indiana.edu/facpub/507> [↑](#footnote-ref-11)