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Part I: Articles

“What Does it Mean? Double Rainbow!”

Resolutional Definitions and Analysis

By Cheyenne Ossen

“The beginning of wisdom is the definition of terms.” -[Socrates](http://www.goodreads.com/author/show/275648.Socrates)[[1]](#footnote-1)

# Jurisprudence

## The interpretation definitions:

“The theory or philosophy of law.”[[2]](#footnote-2) (Oxford University Press, 2014)

“The philosophy or science of law.”[[3]](#footnote-3) (American Heritage Dictionary, 2014)

“The study, knowledge, or science of law” [[4]](#footnote-4) (Cornell University Law School)

“In the United States jurisprudence commonly means the philosophy of law. Legal philosophy has many aspects, but four of them are the most common. The first and the most prevalent form of jurisprudence seeks to analyze, explain, classify, and criticize entire bodies of law.”[[5]](#footnote-5) (Cornell University Law School)

“The science of the law. By science here, is understood that connation of truths which is founded on principles either evident in themselves, or capable of demonstration; a collection of truths of the same kind, arranged in methodical order. In a more confined sense, jurisprudence is the practical science of giving a wise interpretation to the laws, and making a just application of them to all cases as they arise. In this sense, it is the habit of judging the same questions in the same manner, and by this course of judgments forming precedents.” 1 Ayl. Pand. 3 Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 1, 12, 99; Merl. Rep. h. t.; 19 Amer. Jurist, 3. (Bouvier’s Law Dictionary, 1856) [[6]](#footnote-6)

## The implementation definitions:

“A division, type, or particular body of law: modern jurisprudence; federal jurisprudence; bankruptcy jurisprudence.”[[7]](#footnote-7) (American Heritage Dictionary, 2014)

“A system or body of law”[[8]](#footnote-8) (Collins English Dictionary, 2014)

## Ways to think about Jurisprudence

There are two classes of jurisprudence definitions: the interpretation definition and the implementation definitions. If you choose to use an interpretation definition you will be examining, “Resolved: In the United States theory and philosophy of law, the letter of the law ought to have priority over the spirit of the law.” The impact this will have on the round is that you will be debating how the law should be interpreted. Why should judges, philosophers, attorneys, and citizen read the law and with that perspective? Compared to the implementation definitions, where you are going to be debating “Resolved: In the United States system of laws, the letter of the law ought to have priority over the spirit of the law.” With these definitions you will be looking at what method, the letter or the spirit, is actually implemented in our government. The difference is that the interpretation definitions are looking at what ought to be the interpretation, and the implementation definitions are looking at the status quo, current way of looking, at legal interpretation. It is important to understand what perspective of jurisprudence your opponent is arguing from or else you will have two ships passing in the night.

# Priority

“A thing that is regarded as more important than another”[[9]](#footnote-9) (Oxford Dictionaries)

“The right to take precedence or to proceed before others”[[10]](#footnote-10) (Oxford Dictionaries)

“The condition of being prior; antecedence; precedence”[[11]](#footnote-11) (Collins English Dictionary)

“The right to go before someone or something else, or to receive something before they do”[[12]](#footnote-12) (Macmillan Dictionary)

“Something given or meriting attention before competing alternatives”[[13]](#footnote-13) (Merriam-Webster)

“Something that is very important and must be dealt with before other things”[[14]](#footnote-14) (Cambridge Advanced Learners Dictionary & Thesaurus)

“A right to precedence over others in obtaining, buying, or doing something”[[15]](#footnote-15) (Webster’s New World College Dictionary)

## Implications

If you want to be successful this year this is one of the best pieces of advice I can give you: pay attention to the word “priority”.

Ask yourself these questions in the round:

Question 1: What is the definition of priority?

Question 2: Does it set up clash? (Does it require the judge to choose whether something should come first or is better, or is it a definition like “quality or state of being prior”?)

Question 3: Did my opponent prove that his side of the resolution should have priority?

Respond: Attack why your opponent does not prove that his side of the resolution has priority.

Do your job: Now, based on the definition in the round, you must clearly articulate why your side of the resolution should have priority. If you recognize the clash (or lack thereof) over which side of the resolution ought to have priority you will create a much clearer debate for your judge. The last thing you want is for your judge to walk out of the room trying to figure out whether letter of the law is better than the spirit. That will lead to a coin toss ballot where either debater can win. But if you prove that letter of the law ought to have priority over spirit of the law then your judge has something to look back on and say, “They are both great but letter of the law should be considered before spirit of the law.”

# Letter of the Law

“The precise wording rather than the spirit or intent.”[[16]](#footnote-16) (American Heritage Dictionary of Idioms)

“An expression that is used to denote the strict interpretation of an ordinance, law or regulation.”[[17]](#footnote-17) (Black’s Law Dictionary 2nd Edition)

“The strict and exact force of the language used in a statute, as distinguished from the spirit, general purpose, and policy of the statute.”[[18]](#footnote-18) (West’s Encyclopedia of American Law, 2008)

“According to the letter, an orthodox interpretation, by chapter and verse, conservative (sic) interpretation, exact words of the law, exactly as written, literal interpretation, literally interpreted, perfectly as written, precise interpretation, precisely as written, strict construction, strict interpretation” [[19]](#footnote-19) (Burton’s Legal Thesaurus, 2007)

## Pros:

Letter of the law and the affirmative side of the resolution are very pragmatic, while the negative will be very idealistic. While the affirmative may not give the judge as may warm fuzzy feeling, the letter of the law is a more realistic, tangible solution.

Stability- Letter of the law creates a uniform understanding of the United States. This is extremely important on the federal level because of international dealings.

Consistency- I am the oldest child in my family. I remember waiting until I was twelve years old to finally be allowed to watch Star Wars. My little sister was ten years old and she begged to watch the movie with us that night, and mom let her! I was infuriated by the lack of justice as a result of my mom’s lack of consistency. The same thing goes for civil, criminal, and international cases that are decided by the federal court. We all want our laws to be consistent so that we can be treated fairly. As U.S. Court of Appeals Judge Diane Wood once stated, “[N]either laws nor the procedures used to create or implement them should be secret; and . . . the laws must not be arbitrary.” [[20]](#footnote-20)

All the happy values- U.S. Supreme Court Justice Anthony Kennedy once said, **“**When we [Americans] talk about the rule of law, we assume that we’re talking about a law that promotes freedom that promotes justice that promotes equality.”[[21]](#footnote-21) Fortunately this resolution is limited to the United States, and as the affirmative you can contend that the letter of the law is there to uphold human dignity, justice, property, liberty, equality, and pursuit of happiness.

## Cons:

Inflexible: You might have noticed in all the letter of the law definitions there was the word “strict”. Normally there is a negative connotation associated with strictness. One of the greatest disadvantages of the letter of the law being unmovable is that it does not allow for special circumstances. A good example of this is within search and seizure laws. Cops have often found stolen items and drugs in a car when they simply pulling the car over for speeding. Then if the cop searches the car right there on the side of the road the criminal will probably not be convicted. Why? Because the letter of the law requires a search warrant. Many criminals have not been convicted because an authority forgot to follow the letter of the law to its fullest extent. So, in that case, does the letter of the law lead to justice?

Intent- It is important to know why we have laws. Like why is it illegal to have a lemonade stand in Florida? Why should we follow the Constitution? Why did the court make that decision? If you read court case you will find that judges rely very heavily on intent. They have to know what the law was intended for, and why the defendant thinks that they are protected by the law. It is the job of a judge to know what everyone was thinking at the time of the incident. When you read legal cases this year make sure to read the background and the facts of the case. That information will help you understand the how much the judge followed the letter and the spirit of the law.

Corruption: It would be nice to believe that laws are just here to protect use, and promote our human rights… but what if a bad guy started having the power to change our laws? As James Madison wrote in Federalist 51, “Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”[[22]](#footnote-22) The media rants about corruption, but how does that effect the letter of our laws. Such as in our resent Affordable Care Act, Congress is one of the parties exempt from coverage. That is the letter of the law. But should it have priority over what the law was intended to do?

# Spirit of the Law

## Spirit Definitions:

“ [The](http://www.macmillandictionary.com/search/american/direct/?q=the) [general](http://www.macmillandictionary.com/search/american/direct/?q=general) [or](http://www.macmillandictionary.com/search/american/direct/?q=or) [real](http://www.macmillandictionary.com/search/american/direct/?q=real) [meaning](http://www.macmillandictionary.com/search/american/direct/?q=meaning) [of](http://www.macmillandictionary.com/search/american/direct/?q=of) [something](http://www.macmillandictionary.com/search/american/direct/?q=something)”(Macmillan Dictionary) [[23]](#footnote-23)

“The real meaning or the intention behind something as opposed to its strict verbal interpretation.”(Oxford Dictionary) [[24]](#footnote-24)

## Spirit of the Law Definitions:

“The [principle](http://dictionary.cambridge.org/dictionary/british/principle) that a [law](http://dictionary.cambridge.org/dictionary/british/law), [rule](http://dictionary.cambridge.org/dictionary/british/rule), etc. was [created](http://dictionary.cambridge.org/dictionary/british/create) to make stronger, rather than the [particular](http://dictionary.cambridge.org/dictionary/british/particular) things it says you must or must not do: the [exact](http://dictionary.cambridge.org/dictionary/british/exact) words of the [law](http://dictionary.cambridge.org/dictionary/british/law) and not [its](http://dictionary.cambridge.org/dictionary/british/its) more [important](http://dictionary.cambridge.org/dictionary/british/important) [general](http://dictionary.cambridge.org/dictionary/british/general) [meaning](http://dictionary.cambridge.org/dictionary/british/meaning) (Cambridge English Dictionary) [[25]](#footnote-25)

“Spirit of the law refers to ideas that the creators of a particular law wanted to have effect. It is the intent and purpose of the lawmaker, or framer of the Constitution, as determined by a consideration of the whole context thereof. Spirit of law is determined form the letters and the circumstances surrounding its enactment.” (USLegal)[[26]](#footnote-26)

## Analysis:

If you have done any research you already realize that there are not that many definitions of spirit if the law. When you look up definitions a spirit you will often find that there is a definition related to the intent of the law.

## Pros:

Meaning: “What does it mean? Double rainbow.” (If you have not heard this you are uncultured, or you don’t have facebook, which are basically the same things). Anyway, the people in the video were looking for meaning in a double rainbow, in the same way judges, philosophers, and debaters are all looking for the meaning of the law. The spirit of the law explains why we have the law and the intent for the law.

Stability: When the affirmative is going on and on about how the spirit of law cannot create a stable nation I would remind you of common law. England still does not have a Constitution. They ruled the world with a legal system founded in Common Law, also known as the spirit of the law. I know that we are talking about the United States, but Great Britain can demonstrate that spirit of the law can create stability.

Correct interpretation: You must look at the spirit of the law to correctly interpret the law. The Declaration of Independence is a cool document, but the reason it is respected is because of the spirit that it was founded upon. In the same way any law that you read that protects privacy is based on the 14th Amendment that protects liberty, because the court felt that it was within the spirit of liberty that privacy should be protected.

All the happy values- Our government was created to “…form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity…” The United States government’s laws cannot be separated from the spirit on which it was founded.

## Cons:

It’s invisible--Because of intelligent founding fathers, oral history, and a general stigma of baseball and apple pie we all essentially know what the spirit of the law is. However, an invisible belief does not stand up in court very well. It is going to be difficult to explain what the spirit of a particular law is unless it is written by a judge in a decision, and even then judges disagree (don’t forget to read the dissenting opinion.)

Times have changed- In 1776 America’s revolutionized the world by penning these words, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.” This same country enslaved African-Americans, and did not allow women to vote or own property. Now in 2014 we still claim to uphold these rights when abortion is legal. So, what is the American spirit? Do we truly uphold human rights? What spirit is the negative supporting?

# Conclusion:

Just a couple pieces of advice: present definitions that create good clash, don’t make silly definition arguments and don’t stink. As someone who reads Supreme Court cases in their spare time, I am so excited about this resolution! If you chose to dig in and do the research you will not only learn a ton, but you will excel this year.

“Red Law, Blue Law, One Law, Two Law”

Judicial Branch: Enforcer, Interpreter or Censor?

By Jackson De Vight

Topics:

  - Defining Jurisprudence

  - Federal vs. State Courts

  - Federal Court powers

  - Precedent

# Legal Formalism:

There are three primary schools of thought which seek to explain the proper role of the federal court system. “Legal formalism”, the most restrictive of these trains of thought, seeks to bestow the burden of defining the scope and justice of any given law upon the legislature. This arrangement limits the judicial role in the legal system purely to the narrow application of whatever laws have been established by the legislative system. Such a judiciary is, in the terms of the resolution, limited almost exclusively to following the letter of the law.

# Legal Realism:

The second interpretation, and the most progressive formula, theorizes that it is the role of the judicial branch not only to clarify and enforce the precise wording of the law but also to expound upon the intent thereof and to act as a conscientious check on the laws passed by the legislative body. In its purest form this theory, generally known as “legal realism”, does not restrict the courts to overturning laws based only on constitutionality, or lack thereof, but can, in many cases permit them to overthrow or even rewrite laws based on their opinion of what would be just. This viewpoint emphasizes the interpretive and constructivist view of adjudication based on the spirit of the law.

# Legal Process Theory:

The third model, essentially a compromise of the other two, is known as the “legal process theory”. It seeks to employ the process of jurisprudence to draw the boundaries of the scope of jurisprudence.

Although it is unlikely that much of the more nuanced and technical aspects of these theories will be explicitly debated, the impact scenarios and general philosophies inherent to each theory are worth exploring. The characteristics of the specific schools of thought will be discussed addressed add in name of article; we’ll focus here on understanding the role of federal jurisprudence itself.

# Jurisprudence in the United States

Legal formalism stresses that the judiciary has no business arguing over what a law should say; instead, it should look at what it does say. The advocacy for this position is found largely amongst conservative advocates of traditionalist constitutionalism. It is this class of constitutionalism which generally advocates for a rigid separation of powers. The United States federal government is divided into the branches: the executive, legislative and judiciary. Theoretically, there is a distinct line between reading and applying the law. The areas of power unique to each branch are worth exploring in detail and with a close eye to understanding the historical context of their establishment, but a general overview will suffice for the time being.

## The Executive Branch:

The president has the power over the military, over treaties with other nations, veto legislation, and convene and adjure congress. The surprise is how little power over law, and the interpretation thereof, the Constitution grants the president.

## The Legislative Branch:

The legislature has the sole power to create laws, function as the fiscal department, declare war, and confirm various Presidential decisions ranging from appointments to assorted offices all the way to ratifying treaties preliminarily approved by the Executive branch’s State Department and/or President. The Executive branch has the power to veto laws passed by less than a supermajority of Congress (2/3 of each house), operates as Commander in Chief of the US Armed Forces, make declarations (such as declaring a State of Emergency), promote good regulations for extant policies, sets a potential agenda for all three branches, appoints judges and executive department heads (subject to approval by Congress in most cases) and grant pardons to convicted persons except in cases of impeachment.

## The Judicial Branch:

The judiciary possesses the following powers: to determine what laws the legislature intended to be relevant to any given case, determines what the legislature meant by any given law, establish court procedures and laws’ bearing on various specific facets of the courts’ behavior, reinforces uniform interpretation of laws based on a top-down system of appellate courts and determining the constitutionality of a case. It ought to be clear by the above list that the power of the judicial system is indeed immense. That power has steadily grown over the years since the courts initial establishment. For example, the power to hear a case to determine a law’s constitutionality (part of a practice known as judicial review) was not even extended to the courts until 1803 in Marbury v. Madison but is nonetheless perhaps the best-known and publicized duty of the Supreme Court of the United States. Knowing the demographics and political inclinations in the league, I would imagine that the separation of powers debate will be pretty common, particularly in the early stages of the season.

## Federal vs. State Jurisprudence:

The real line that limits federal jurisprudence today isn’t the roles and limitations of the judicial branch per se, but rather the line between state and federal justice systems. In the status quo  federal courts technically only have jurisdiction over the following: admiralty law, bankruptcy cases, select disputes between states, cases dealing directly or indirectly with international policies and treaties, cases for ambassadors and public ministers and questions of a law’s (either local, state or federal) constitutionality. State courts have sole jurisdiction over almost all probate and inheritance debates, criminal law, contract law, traffic and personal injury cases as well as real estate law, juvenile law and domestic/family law.

Note that several of the categories which are heard by the federal court system have an inbuilt creative element to them. The judicial branch’s power largely stems from two important areas of power: judicial review on grounds of constitutionality, and the ability to define/interpret legislative intent.

The remainder of this article will attempt to cover the basics of these two concepts which are, both in terms of their historicity and practical applications, subjects upon which gallons of ink have been spilt by legal academia.

For further reading on the topic I highly recommend the following, despite potential bias: Courting Disaster: The Supreme Court & the Unmaking of American Law by Martin Garbus (2002), The Myth of Judicial Activism: Making Sense of Supreme Court Decisions by Kermit Roosevelt III (2008), Reaching Out Or Overreaching: Judicial Ethics and Self-Represented Litigants by Cynthia Gray (2005, accessible online) and Introduction: A Symposium on ‘The People Themselves: Popular Constitutionalism and Judicial Review’, by Daniel W. Hamilton (2006, accessible online).

# How Judicial Review and Interpretation Functions in the Real World and in the Resolution

There are lots of federal laws currently on the books, to say nothing of the many several state and local regulations or even regulations passed by bodies other than Congress itself (such as those established by the FDA, DHS, IRS, FCC, EPA, SEC, HUD and FEC.) The ironic imprecision of a legal environment which regulates vast swaths of society, yet it doesn’t have the foggiest clue how many laws it has itself directly or indirectly created. This is precisely why federal courts spend cumulative decades of human resources each year trying to interpret and reconcile thousands of laws, regulations and policies stemming from somewhere north of 200 law making, regulatory bodies in the United States. In fact, depending on the year, most of the influential cases heard by federal courts deal with state and local legislation rather than with federal code, especially in relation to social issues. Note that the term ‘federal jurisprudence’ refers not only to the Supreme Court but also to all 13 US courts of appeals, 94 US district courts, the Court of Claims, US Court of International Trade and assorted specialized courts dealing with bankruptcy and other matters. These courts make thousands of decisions each year, employing a mixture of statutory and case law constructed, overturned and theoretically standardized by more than two centuries of precedent.

It is this precedent which forms the heart and soul of almost all federal jurisprudence. The acceptance of appeals to the Supreme Court of the United States (SCOTUS) hinge on this sacred cow of legal theory, defined simply as the concept that within the hierarchy of the federal courts (and below them the state courts) the opinion of each court on any given matter is used as a sort of answer book to both lower and later courts. For example, if one of the United States Court of Appeals decides that law ‘X’ bans activity ‘Y’ it is assumed by all courts below that particular court that ‘X’ does indeed ban ‘Y’ and future United States court of Appeals will almost always cite the precedent of that case and offer summary judgment on future cases dealing with that question. Functionally, the only time this system does not work this way is when one of two things happens. First, assuming one or both parties appealed beyond the United States Court of Appeals to SCOTUS itself and SCOTUS accepted the case they could overturn the decision of the court of appeals and thereby set their own opposite precedent. (SCOTUS generally tends to only hear cases that it considers very possible to be overturned) Alternatively, another series of courts could hear a similar case and consecutively come to a different come to a different conclusion until another United States Court of Appeals makes a contradictory decision to the former court at the same level at which time the case would go to SCOTUS to offer final arbitration. Despite the seeming unlikelihood of so many variables coming into place for cases, even at the appellate court level, some of the most important cases in our nation’s history have involved overturning cases. This is not exclusive to the appellate decisions but earlier decisions made by SCOTUS itself can be overturned as well. (Pace v. Alabama > Loving v. Virginia, Dred Scott v. Sandford, Plessy v. Ferguson [yes, it’s the same Ferguson] > Brown v. Board of Education are all more or less good examples).

There have been several cases that have been heard and decided by the Supreme Court which have frustrated both sides of the aisle throughout the history of our country. The near-impossibility of overturning a SCOTUS decision without its cooperation (it requires a ¾ Congressional majority and presidential approval) makes it a popular target for pundits on both sides of the aisle. FDR’s court-packing scheme, early attempts to ignore the court altogether for any state matters and the combativeness of conservatives toward the court over issues covered in Roe v. Wade and National Federation of Independent Business v. Kathleen Sebelius, Secretary of Health of Health and Human Services (the ACA case) are all symptoms of US citizens at all levels of government, including within the court system itself, trying to work out how that system functions best. It involves a complicated analysis balancing modern needs and traditional understanding of the checks and balances within the judiciary’s foundational charter.

“Spirit and Letter of the Law According to Philosophy”

Philosophical Insight to the Resolution

By Bethany Foster

# Introduction

The topic of the letter and the spirit of the law is complex one, since these are ideas meanings seem to shift with every generation. However, the modern world continues to call for the discussion of this idiomatic antithesis. This question is particularly relevant to the American Constitution and how this foundational piece of law should be viewed. How should we understand the distinction between the letter of the law and the intent of those who wrote the law? In order to more fully understand this complex question, this paper will look to several different sources and philosophers. This article is to give you more contextual knowledge for debate, I am not suggesting that you bring some of these ideas into the round.

# Biblical Analysis

Interestingly, the Bible is one of the first places where the distinction between the spirit and letter of the law is introduced. Jesus entered a culture consumed by legalism. The priests of the time, or Pharisees, were experts at following the letter of the law, but seemed to have forgotten the reason why these laws were put into place. Mark instances where the Pharisees condemn Jesus for not adhering to their stringent laws. Each time, Jesus counters their rebukes by illustrating they have forgotten the spirit of the laws which they are following.

When the Pharisees see Jesus and his disciples picking wheat on the Sabbath, they confront him with the letter of the law. Jesus replied with “The Sabbath was made for man, not man for the Sabbath” (Mark 2:27). In this way, Jesus reminds the Pharisees and readers today that the laws are meant to serve you, not the other way around. Throughout Jesus’ ministry, he confronts those who employ the law without love for their fellow human beings. This point should be remembered when the Spirit of the Laws vs the Letter of the Law is being discussed.

Of course, this is usually not the way we view law today, but the Bible does have much to say on this topic. Another particular passage speaks to the intent and letter of the law. After Jesus’ death, his disciples and other followers dealt with a difficult problem. If a gentile wanted to become a Christian, the early church had debate as to which parts of the Old Testament law he or she had to follow. In fact, this debate is something that has existed for the entirety of the Church’s history and continues to this day. Responding to this dilemma, Paul writes, “a person is not a Jew who is one only outwardly, nor is circumcision merely outward and physical. No, a person is a Jew who is one inwardly; and circumcision is circumcision of the heart, by the Spirit, not by the written code” (Romans 2:28-29). Through this, Paul instructs the follows of the newly born Christianity to respect the spirit of the religion they are following in addition to following the letter of the law.

Now, it is vital to remember the political world which the Bible took place within is vastly different from the political systems we deal with today. Specifically the Bible is referring to the law based on theocracy, were America deals with law built upon Enlightenment ideals. Still, understanding Biblical wisdom to this issue highlights the significance of the question of the spirit of the law vs the letter of the law.

# Moving into Modernity

We fast-forward several thousand years to the shift of ancient politics to modern methods of ruling. In order to understand this shift, we will briefly examine Machiavelli’s The Prince as this lays the foundation for modern laws and their spirit. Around 1530, this pivotal piece of political discourse was written. Ever since it’s publishing, The Prince has been controversial as it demonstrates that government’s main interest is to gain power, not to bring virtue to the people as the ancients described. This pragmatism was revolutionary to the way people viewed their governments and their role within the government. It is difficult to stress how important this break from the ancient political philosophies, but Machiavelli’s work has been echoed in history ever since it’s penning.

A few hundred years later, Baron de Montesquieu wrote The Spirit of the Laws. This political treatise has had an enormous influence on the political systems of many nations including the United States Constitution. With Montesquieu came a focus on the laws and how important those laws are to the ruling of citizens. Political liberty, or personal security is protected and framed by a system of dependable and moderate laws. Through the importance of the laws, Montesquieu also laid the foundation of modern legal law. If civil and criminal laws are set up appropriately, they will ensure the political liberty of the individuals. It is very apparent these concepts greatly influenced the Framers of the American Constitution, along with many other ideas from the Spirit of the Laws.

# The Manifestation in Early America

Because the topic of the Founding Father’s original intentions in regard to the laws they formulated is so complicated and controversial, the next thinker we will examine is Alexis De Tocqueville. In 1831, the French government sent Tocqueville to America to study the prison system, and Tocqueville took this opportunity to analyze the new American society. Later, his observations and commentary were published in Democracy in America. Within Tocqueville’s analysis, he addresses the way the law and the people interact.

Tocqueville believed the American people to have a great respect to both the spirit of the law and the letter of the law. Because everyone actively participated in the making of the law, “the United States each finds a sort of personal interest in everyone’s obeying the laws” and “however distressing the law is, the inhabitants of the United States submits to it without trouble” (230). Ultimately, the nature of the laws led to the American people having a respect and love for the legislature. Tocqueville saw this affection for the law to be caused by the Americans’ ability to change the law if they disagreed with it (231). In this way, the letter of the law and the spirit of freedom was respected in early America.

# Conclusion

The topic of the spirit and letter of the law is an important issue that is extremely relevant today as modern America debates about the relevancy of the Constitution. The Bible has a plethora of things to say regarding the spirit of the law and the people who ignore the spirit of which laws are made. However, modern countries laws are not as clear as the Old Testament law was to Jesus’ followers. Throughout human history, our ideas of government and the individual has shifted radically, beginning with Machiavelli’s pragmatic view of government. Many other philosophers, including Montesquieu wrote about the law and its importance to government. Therefore, the spirit of the law and the letter of the law are important to our very freedoms and equality. These ideas were put into practice when the United States of America was founded and are still playing out to this day. Go forth and debate!

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“Understanding the Understanding of the Law”

Court Room Applications

By Matthew Erickson

# Introduction

This is more or less a haphazard list of possible applications to use this year. My goal was not to create an exhaustive list (that would be almost impossible); instead, I hope that the examples in this article will serve as a tool to get you thinking about the many different ways to approach this resolution, and to give you an edge over your opponents in developing cases with significant evidential weight.

# Understanding the Letter of the Law

## Worcester v. Georgia

The meaning of the “letter of the law” is particularly difficult when one or more party in a case does not have equal access to the language those letters are written in. Such was the case in United States v. Choctaw Nation and Chickasaw Nations. This case is rather difficult to read, but yields some very interesting insights.

The essential conflict in this case was that there were multiple treaties that had been enacted as well as a piece of legislation from Congress. Land had been ceded by the tribes so that African Americans being held as slaves by the Choctaw and Chickasaw could be freed and have somewhere to live. The Native American tribes were unsure exactly what the treaty had said. Justice McLean says regarding the case “"How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.” Justice McLean continues in the same decision: “But in no case has it been adjudged that the courts could, by mere interpretation or in deference to its view as to what was right under all the circumstances, incorporate into an Indian treaty something that was inconsistent with the clear import of its words.”[[27]](#footnote-27)

We see here in this excerpt Justice McLean essentially arguing with himself. On one hand he deals with the inherent difficulties of forcing people who don’t understand letters very well to comply with the letter of the law. What do you think? Should Native Americans have been given more lenience with the interpretation of treaties?

## Halbig v. Burwell

Halbig v. Burwell is one of a few notable court cases dealing with the Affordable Care Act or Obamacare. It centers on a debate about the meaning of a few key provisions dealing with subsidies to individuals within the state and federal health exchanges. Jacqueline Halbig, the plaintiff, sued because a literal reading of the Affordable Care Act reads that only individuals under the State Exchanges were eligible for healthcare subsidies.

The IRS (and many supporters of the Affordable Care Act) said that this is just a technicality and Congress intended the subsidy to apply to people using the Federal Exchange, not just those in State Exchanges. If the subsidies were held to this stricter standard, citizens in 34 states will have higher healthcare costs.

The U.S. Court of Appeals for the D.C. Circuit notably ruled in favor of the plaintiff, Jacqueling Halbig. They stated “Because we conclude that the ACA unambiguously restricts the section 36B subsidy to insurance purchased on Exchanges ‘established by the State,’ we reverse the district court and vacate the IRS’s regulation.”[[28]](#footnote-28)

Obviously this decision caused a lot of conversation on both sides of the issue. The decision has been appealed and will be heard again sometime in December of this year. Until then, we can debate about the merits of spirit of the law and letter of the law in this instance.

## Commonwealth v. Robinson

This case is especially notable in today’s environment because it deals with the laws restricting acceptable behavior from police officers. In light of the recent Ferguson protests, many desire for police to be held to stricter rules of behavior.

In the case Commonwealth v. Robinson, a young woman called the police because her boyfriend was being held at gunpoint by her ex-boyfriend. A description of the accused’s car was given out, and before long the police approached the car. The defendant and two other individuals were in the car. Two of them fled the scene and another stayed behind.

The police officer responding to the scene of the crime, after handcuffing the third passenger, searched a bag he found in the car. He discovered the gun that the defendant had threatened with earlier. No big deal right? Wrong. The laws of Massachusetts state that officers must first “patfrisk” (feel from the outside) to determine if there might be suspicious items inside. If there are heavy objects that the officers cannot determine the identity of, only then may they search the container. Because the courts upheld a “letter of the law” interpretation of the law, the gun was ruled as being inadmissible evidence.[[29]](#footnote-29)

# Understanding the Spirit of the Law

## Executive Orders

Executive orders have recently become a hot topic for members of both political parties in the United States; specifically, the constitutionality of many executive orders that create or modify law is very much in question. However, the root of the issue is much deeper than if specific executive orders are permissible. People who have read the Constitution will note that it never once mentions any powers with executive orders. How is it that they are allowed then? The majority opinion is that executive orders are within the spirit of the Constitution. Dave Kraljic, CEO of Vote Tocracy explains “Presidents have been issuing executive orders since 1789 even though the Constitution does not explicitly give them the right to do so. However, vague wording in Article II Section 1 and Article II Section 2 gives the president this privilege.”[[30]](#footnote-30)

## Medicines Company v. FDA

The FDA and the United States Patent and Trademark Office state that companies have a 60 day renewal period where they can apply to have their trademarks renewed. A problem ensued when a company called “Medicines Company” applied for renewal of the blood thinner Angiomax one or two days late.

The letter of the law interpretation would be that the company failed (by a day) to comply with the necessary requirements to renew their patent. Since the Medicines Company was relatively small (they only had a couple of drugs on the market), the billions in losses would have surely ruined the company: all due to an administrative error.

The conflict here was really over the spirit of the law in regards to patents. The reason that we have patents in the first place is to encourage innovation and reward companies that make technological breakthroughs with protection of their intellectual property. Dr. Kristina Lybecker, Professor of Economics at Colorado College says “The scientific and financial resources required for these advances are an investment worth making and an important precedent for global health. Patents encourage those innovations, making cutting-edge treatments a reality. Patents give innovation life.”[[31]](#footnote-31)

In the end, the courts sided with Medicines Company and the spirit of the law, after nine years of legal battles and around $4 million spent in legal fees.[[32]](#footnote-32) This is just one relatively unknown case, of which there are many, but small cases like this built legal precedent one way or another, and Medicines Company was saved billions of dollars in losses.

# Conclusion

The debate between the letter of the law and the spirit of the law is certainly not a simple one, especially when one considers factors like people’s ability to understand letters, the potential for confusion in large pieces of legislation like the Affordable Care Act, and the everyday occurrence of administrative errors. Because this debate is so complex, debaters that have great evidence to support their case will do very well (and learn a lot in the process). Good luck!

“Controlling the Narrative with Centered Cases”

Framework and Application Structure

By Travis Herche

First, a little preface. This article assumes that you have a solid grasp of fundamental value theory. You should know how to construct coherent cases with nothing missing and nothing that doesn’t belong. Most importantly, you should be comfortable defending your value with value links and reasons to prefer and you should know how to write contentions so they aren’t just catch-alls for whatever advocacy didn’t fit somewhere else. If you’re at that point, this article will help you maximize your strategic control in round. If not, you’ll only be confused. And that’s okay! You’ll get there. My book *Keys to Lincoln-Douglas Debate* is a great way to do it.

# Different Cases

Now, here comes the advanced stuff.

Let’s assume that both affirmative and negative are running standard cases: a value, two value links/reasons to prefer, and two contentions with an application each. Traditional debate says to spend about equal time on each argument – meaning you’ll finish your Negative Constructive (NC) script within 3:30, jump over to the affirmative side, and hang out for a long time running all kinds of responses. That’s fine for novices who are struggling to come up with strong refutation for every point on the flow. Eventually, you should reach a point where you can choose between different logical responses, and you can manage your time so you don’t just spend 45 seconds on the first argument in the first Affirmative Rebuttal (1AR) simply because it happened to come first.

The problem with traditional, non-strategic thinking is that it tells the judge: “All points are of equal importance – from my value to my opponent’s application.” That’s incredibly dangerous. All cases have strong points and weak points. The judge needs to view your strong points as the important ones, the weak ones as merely relevant, and your opponent’s case as an afterthought. The reasons your opponent might win shouldn’t matter to the judge at all.

To do that, you need to rethink everything you’re doing in the round, starting with your case script. Mentally divide the case into two parts: the framework and the contentions. Your case should be focused on exactly one of these two parts.

## Framework-centric Cases

A **framework-centric case** is one with an aggressive value or criterion. You’re trying to sell a philosophical idea that makes winning effortless for you. My “I Meant What I Said” case is a good example of this: if you agree that Normative Meaning is the best way to measure the round, there’s no way you’re going to vote for spirit of the law. The value is so aggressive that I barely even need contention applications; the contentions are that obvious.

## Contention-centric Cases

A **contention-centric case** is one with aggressive, high-impact contention applications. The terms “contention-centric” and “application-centric” are often interchanged, but the most theoretically correct way to describe this center is “contention-centric,” because an application serves merely as a warrant for the claim in your contention. By itself, the application is technically meaningless. That said, contention-centric cases are all about the applications.

These two centers represent different ways of thinking about value debate. Be aware that many judges come into the round with a preference, or even a stubborn certainty that one particular centricity is the “correct” way to debate. For example, a judge with a lot of policy experience may favor the more practical application debate, while an experienced mom may be seeking the perceived educational benefits of digging into values. Both centers are logical and valid, but they’re also very different. You should be comfortable in both and always pay close attention to how the judge is responding to you.

If you run a framework-centered case, pick an aggressive value and fortify it with 2-4 value links. Feel free to run applications in the value links. Do whatever you need to do to sell it; when you move on from your value statement, the judge should be 100% on board with your value and the negative should be looking at a major uphill battle if he wants to dislodge it.

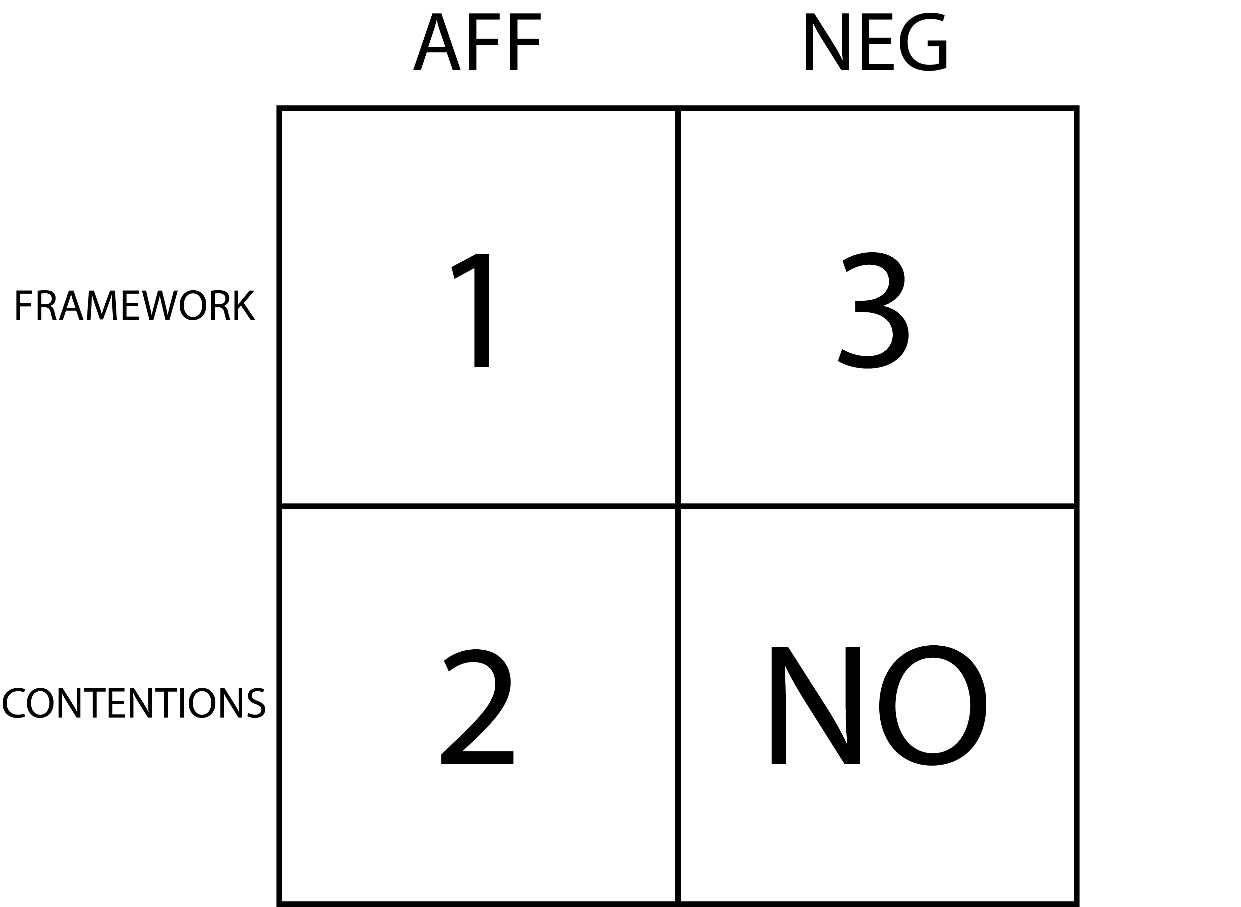
From there, you need to complete your logical syllogism by defending your contentions.

From there, you need to make sure your opponent’s framework falls. You’re thinking defensively here, but it’s a necessary defensive move because you can’t win with that opposing framework getting in your way.

# Applications

Last and very much least, deal with your opponent’s contentions/contention applications. You should feel like you’re running on hot coals for this part because you cannot win your opponent’s applications. All you can do is not lose them, and every second you spend on them tells the judge that it’s okay to vote on them. In other words, you’re shooting yourself in the foot if you devote more than the fastest, most efficient refutation possible to it. Get it over with and move on.

Here’s a visual portrayal of your priorities as a value-centric affirmative.



Remember, this has nothing to do with the order of your speech; this is about where you should be spending time and when you should be pushing through as quickly as possible.

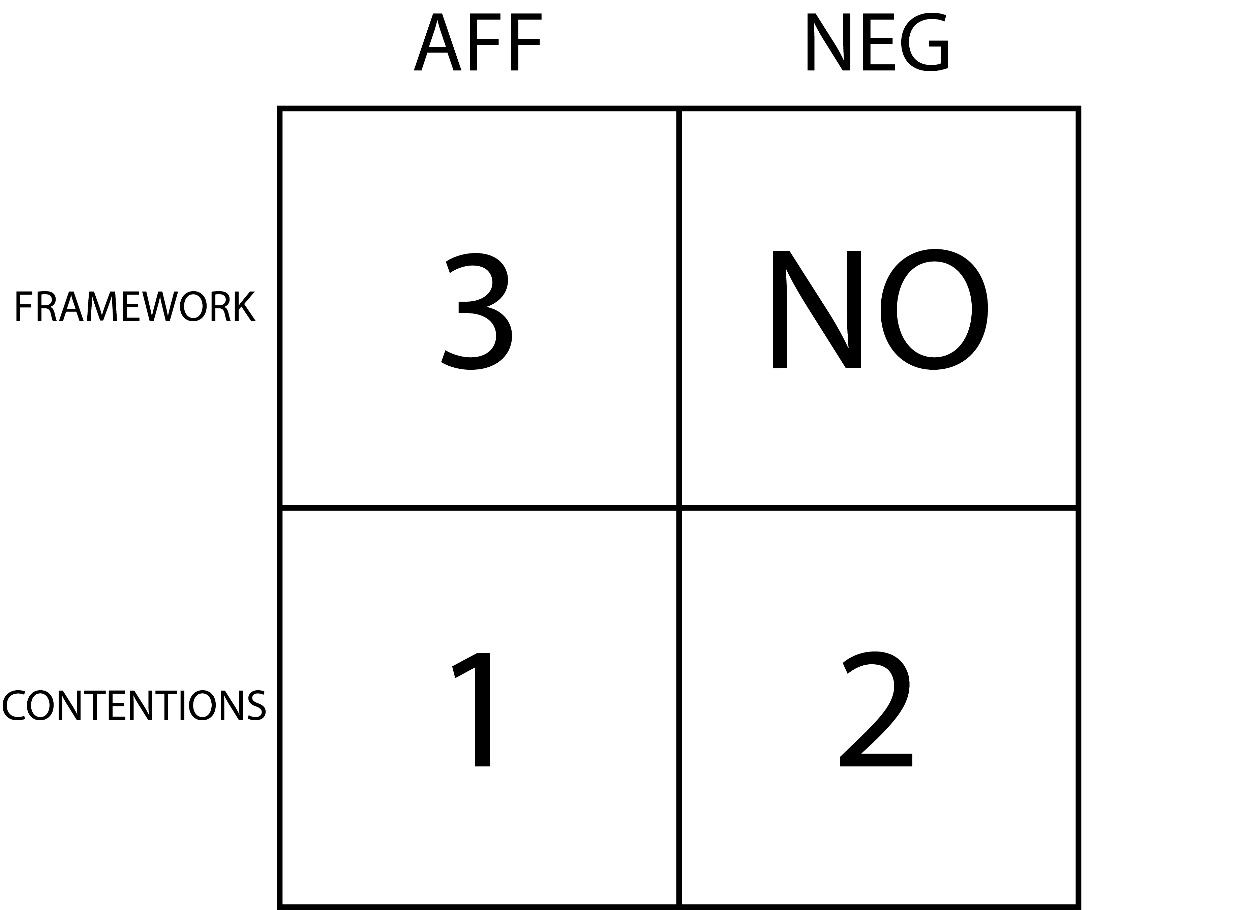
If you’re contention-centric, avoid value debate as much as possible. Do that by running a buffer value: a broad value like General Welfare or Justice that doesn’t push you forward much but is also very hard to defeat. Its purpose is to shut down your opponent’s value and is the best defense against a negative framework-centric case. You won’t win the value debate, but you won’t lose it, and you’re now free to spend as much time as you can where it counts: the applications.

The priorities are a little different here because you don’t want the judge thinking about values at all. Deep down, you want her to use a policy-esque net benefits paradigm. You want her thinking pragmatically.

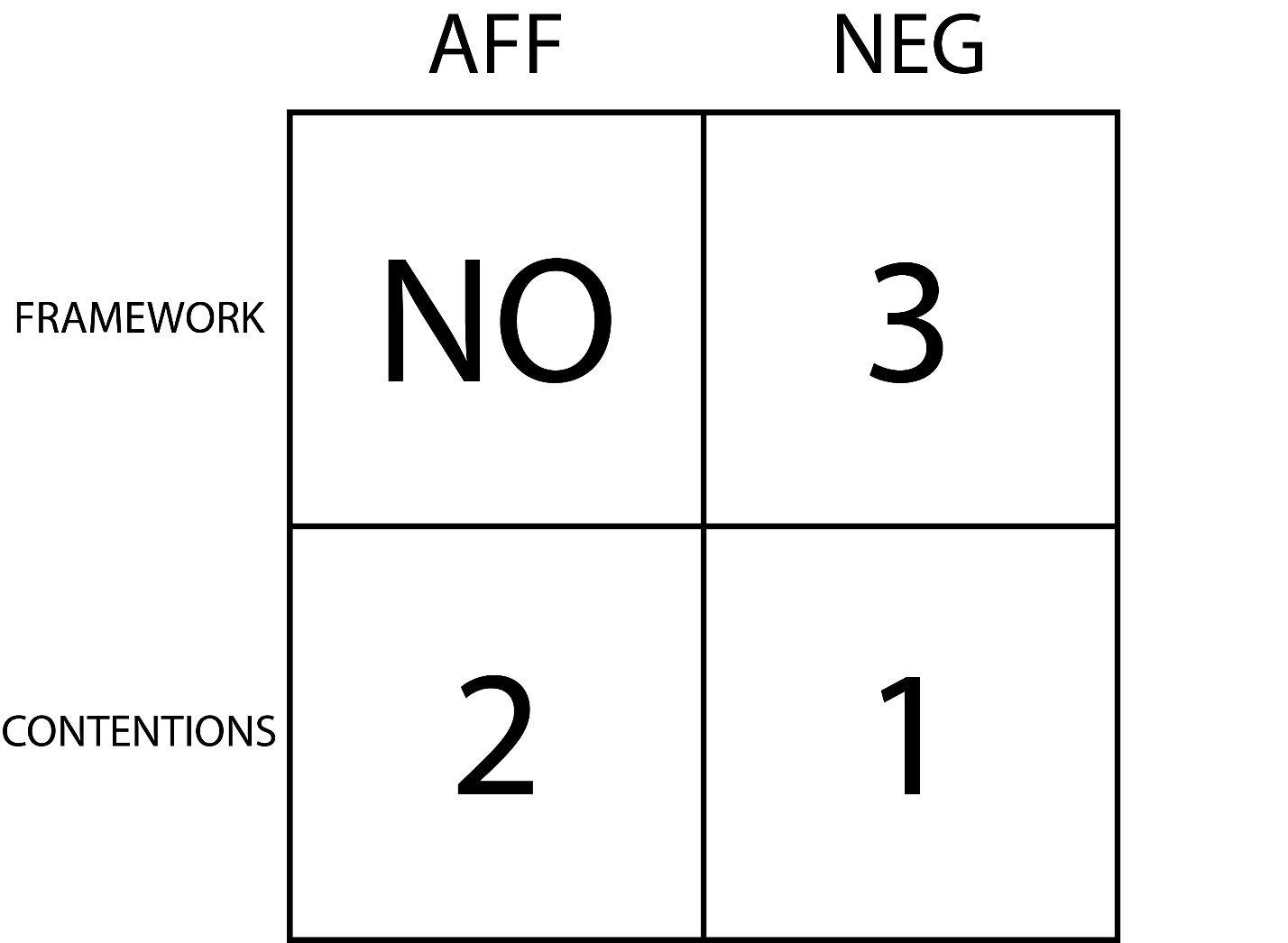
To make sure that happens, you are forced to tangle with your opponent’s contention applications a bit. If you can, run turn responses against them so they become offensive material for you. If you can’t, do what you need to so the judge will agree when you tell her you won the application debate in the 2AR.

Your third priority is your value – mainly because, with it in place, you have confidence that the judge won’t rule on the values at all.

The negative framework is your no-man’s-land. You can accomplish nothing there, and every second that you spend on it you’re conceding control of the round to your opponent. Defend quickly and efficiently, or just concede the value debate if possible.



The priorities are mirrored for the negative. For example, here’s the breakdown for a contention-centric negative:



Remember that strategy should always be subservient to logic. Never compromise your advocacy for strategic control. Never drop an argument because it’s in your no-man’s-land, or cross-apply an argument where it doesn’t belong because you want to save time. Steer clear of gimmicks like red herrings or speed-and-spread. They don’t work against competent opponents. Master the basics, then build off them into brilliant strategy.

As with all strategy, these are basic rules of thumb, designed to get you started in the right direction. The most important thing to grasp is the concept behind it, so you can adapt when things get crazy in a round. If your opponent runs a pre-value-centric case (such as a negative with a resolutional analysis saying that the resolution is absolute), you need to adapt. Strategy is not about executing a set of rules; it is about creating and siezing opportunities. This article is a great starting point for creating them in the way you construct your cases. Have fun!

“How To Not Be Annoying”

A Guide in Value Strategy

By Noah Grey

Stop.

Please, just stop. Like really. Stop talking.

A lot of conversations end up just like this: with annoyance, confusion, and frustration. As much as we love to talk to people, we're easily irritated when the conversation doesn't go the way we wanted it to.

"Why should I clean my room?" "Because I said so."

"Where do you want to eat?" "I don't care, you choose." "Ok, how about here?" "Nope."

"Did you like the movie?" "No." "Why not?" "I don't know."

We're frustrated when we don't understand what people are trying to communicate. In real life AND in the debate round, everybody is easily irritated by a conversation that seems to be going in circles, so when we're given the opportunity to break the circle, it's important to do it right; it gives you the opportunity to turn an annoying debate into a productive conversation

# Value Theory

I work with a lot of students from various backgrounds, and I'm continually shocked at how many coaches tell their students the "right" way to write cases, the "right" jargon to use, the "right" strategies, but completely fail to teach their students WHY it's the "right" way to do things. There's good reason for EVERY piece of theory and terminology in debate (although some reasons are better than others), so don't ever do yourself the disservice of saying anything because I (or anybody else) told you to say it. I would much rather you understand and disagree with me than you agree with me and not understand why.

## 3 Qualities of Values

The purpose of presenting a value is to provide an external measurement of the resolution. In other words, to break the battle of counting up examples to give the judge a single, objective rallying-point--a REASON to vote for you. There are three qualities that values must have, because they make sure that your value is giving the judge a good reason to circle your name at the end of the debate.

**A. Values must be external.** That means that the value has to introduce a new idea into the round in order to make a meaningful statement about the resolution. For example, if I were to say "Resolved: We should eat a healthy choice for dinner" and use a value of “Health” that value would fail to meet this requirement, because it isn't introducing a new idea into the round: It's essentially just saying "We should be healthy because of health." While that may be true, it isn't enough to show WHY it's true. In order to make a meaningful statement, the value has to introduce a new idea into the round. Remember, you're trying to give the judge a reason to vote for you. So, if your value isn't contributing anything to the conversation, you aren't making an impact on their way of thinking.

**B. Values must be polar.** What this means is that your value has to be from either the Arctic or the Antarctic regions. (Naaahh, just making sure you're still listening.) What this really means is that your value has to have... \*drumroll\* ...value to it. If your value isn't particularly desirable, then why would the judge want to vote for you? You can do this through two avenues: either a value that the judge WANTS- life, freedom, justice, etc.-or an ANTI-value that the judge wants to avoid, like tyranny, vagueness, or dropping their ice cream on the ground. In my sample case, I used an anti-value of Vagueness to show that voting for the affirmative will desirably eliminate vagueness in our law, which is giving the judge a polar reason to vote affirmative.

**C. Values must provide a weighing mechanism.** This means that values have to not only be something that the judge wants, but they also have to be unique to your side of the conversation. Imagine the resolution "You ought to vote for Steve for Student Council President." If you valued something like "political activism" on the basis that voting for Steve means taking an active part in the vote, then you may be presenting the judge with something desirable (aka "polar"), but what would happen if you voted for somebody OTHER than Steve for Student Council President? If you voted for his opponent, you would still be just as politically active, but you would also be negating the resolution. That would mean that your value DIDN’T give the judge a reason to agree with YOU, because your opponent's position would be equally beneficial by that standard.

It's worth harping on again: values are presented to sum up your advocacy and give the judge a reason to vote for you. That's why they have to be external, polar, and offer a weighing mechanism. If any of those pieces are missing, the judge's motivation to vote for you is missing too.

So we have a good grasp on what to look for in a general value, now let's look at this resolution specifically.

# A Unique Resolution

In order to know the best way to talk about this resolution, it's important to understand what's unique about both sides of the conversation.

## What's unique about the letter of the law?

First of all, we know something that ISN'T unique. Both the letter AND the spirit of the law both share a lot of goals: namely, their goal for justice. However, they arrive at that goal in different ways, and it's important that your value outlines what's unique about your side of the resolution. Here are a few things to keep in mind as you look for an affirmative value:

1. The letter of the law tends to be more specific, while the spirit of the law tends to be broader. Since the letter of the law deals with a much more limited number of interpretations of our law, it will be a lot more well-defined than the spirit of the law. Questions to ask might be: why is it good to be specific? What's wrong with being broad? What real-life problems are solved (or can be solved) by specific laws as opposed to broad laws?
2. The letter of the law is correctable. Because the spirit of the law is generally broader, when it's wrong, it's harder to put a finger on WHY it's wrong. Since the letter of the law is generally more black and white (or at least tries to be) it's easier to find the problems. Since the letter of the law also favors adherence to the written words instead of the general motives of the law, the process of formally revising and amending the letter of the law is a lot more straightforward than the frequently subjective process of rethinking the spirit of the law.
3. The letter of the law allows knowledge of the law. This is a big one. How are we supposed to keep the law if we don't know what's legal and what's illegal? What if breaking the letter of the law doesn't break the spirit of the law? Who's to say what's really right and wrong? The letter of the law gives us a way of knowing exactly where the line is drawn so that we can know to not step over it. Like the examples I give in my case, not only are the civilians punished for breaking the law, in a sense they're also being punished because the law wasn't clear enough. Is it right to punish citizens because the lawmakers were unclear?
4. The letter of the law limits the scope of the law. Although it may seem like adding to the written law might give the government MORE control, in fact, it limits the control that the government has by laying out clear lines for what they have the authority to do. Examples of the spirit of the law being used to justify questionable action aren't hard to find. What about the George Zimmerman/Trayvon Martin case? Without an exact criteria to determine whether law enforcement was in the right, we're stuck with a subjective standard. Knowing the exact limits of the law helps us keep the government in check.

## What's unique about the spirit of the law?

The negative also has a great field of ideas to draw from. Here are a few things that make the spirit of the law unique:

1. The spirit of the law tends to be broader, while the letter of the law tends to be more specific. A lot of arguments have counter-arguments that are equally reasonable. What's good about general laws instead of specific ones? What problems are solved (or can be solved) by the elimination of overly specific laws in favor of more broad laws?
2. The spirit of the law eliminates loopholes. Think about Shakespear's The Merchant of Venice, where Antonio (the merchant of Venice) promises Shylock (a loan shark) a pound of his flesh if he doesn't repay his loan, and then when Antonio falls through, Shylock gets nothing because of one of the most famous loopholes in the letter/spirit of the law debate: That Antonio promised a pound of flesh, but not any blood. Since Shylock can't take the pound of flesh without also taking blood, the contract is somehow annulled. Although I would hope a situation like that wouldn't take place in real life, it does illustrate the way things work when we prioritize the letter of the law: often the ethically wrong thing can be legally right. The spirit of the law levels the playing field and takes steps towards justice by stopping loopholes like that from having so much weight. The spirit of the law helps us stick to the philosophy behind our laws, and not just the laws themselves.
3. The spirit of the law manages the quantity of laws. Just like the letter of the law helps us know the law by making it explicit, the spirit of the law helps us know the law by keeping it down to a knowable quantity. Our legal code is already way too long to ever be read by a normal human being, never mind to be comprehended by a normal person. Adding to the letter of the law will only hide the legitimacy of the law under a pile of paper. The spirit of the law makes the ideological basis of the law more important than the minutia and technicalities of the actual written law.
4. The spirit of the law allows the evolution of jurisprudence. This is a problem that we see all the time: there's a problem, it needs to be fixed, but it's too deeply ingrained into our system of doing things to go back and change it. Reliance on the letter of the law forces us to get ingrained into our current legal system, whereas valuing the spirit of the law helps us keep an open mind to change. Our jurisprudence (philosophy of law) has changed dramatically over the years, and focus on the letter of the law will keep us anchored to where we are now. Which, fortunately or unfortunately, will stop things from ever changing.

## What's the burden scope?

As with most value resolutions, the burden scope of the resolution is general. The affirmative must prove the resolution true as a general principle (51% true if you like to be technical), and the negative must prove the affirmative and/or the resolution to be generally wrong. There's a little more to it than that, however, when we consider WHAT the affirmative has to prove. Is it that the letter of the law is just all-around BETTER than the spirit of the law? That is should be prioritized in at least 51% of examples? That our legal system would be generally better if we relied on the letter of the law more? When we consider the way the letter and the spirit of the law work together, we can shed some light on this labyrinthine nightmare. Unlike some resolutions, the conflict in this resolution isn't always a conflict. The letter and the spirit of the law exist in the same spheres, they work towards the same goals, they frequently look the same when they're acted on, and they frequently agree. When the letter and the spirit of the law are one and the same, how can we value one over the other? Simply put, we can't. The phrase "have priority" implies an action, meaning that we have to pick between the two. If they're indistinguishable, we might still think of one in more glowing terms than the other, but we can only give one PRIORITY when they disagree. Although the resolution doesn't use the phrase "when in conflict" like this year's other resolution does, it could be useful to keep that limitation in mind, that we can only give one priority when they're in a state of conflict with each other. So much of the "spirit" of our laws has already been written down that it exists in spirit and in letter harmoniously. It's only the situations where they can't coexist that we have the opportunity to prioritize one over the other, and that's ultimately the burden scope of the resolution, to choose the letter of the law over the spirit of the law as a general principle when they come into conflict with each other.

## The strongest form of value conflict

While lots of values fit the three criteria we talked about earlier, not all useable values are created equally. There's a weak and a strong form of clash you can create with your value. The weak form sounds something like this: "My opponent and I both want the same thing... but I can get it slightly better than my opponent so you should vote for me." A clash like that can and does win! But persuasively, you're putting yourself in a weak position. If you and the negative BOTH get the same thing but you only get it slightly better, the judge DOES have a reason to vote for you, but the convection to vote for you isn't as strong as it could be. Consider a statement like this: "This is what you get by voting for me, and here's why it's better than what you get for voting negative." Not only has the conversation shifted to a much clearer benefit-analysis, but persuasively, it's created a much clearer and stronger clash between you and your opponent. Remember, both forms of conflict are legitimate and "correct," but I would recommend considering the clash when you write your case. Remember that your value should be a weighing mechanism, meaning that it applies to YOUR side of the resolution more than it does your opponent's. Your value should outline what's unique about your side of the resolution. That's why I chose to avoid the value of Justice in my particular case, because both the affirmative AND the negative can achieve it to a certain degree. I picked my anti-value of Vagueness because it was tied to the affirmative, but not the negative, so it outlines the conflict and makes for a cleaner, clearer, more persuasive conversation.[[33]](#footnote-33)

# Strategy

So we know all about what defines a value and what's unique about this resolution, now let's look at some value strategy.

## Value scope

The common fallacy of value clash is phrased a lot like this: "You should vote for me because I have the highest value in the room." or "my value is superior to my opponents value, therefore I deserve your vote." While on the surface, that's true, it's only half the conversation. Since the debate is limited by the scope of the resolution, the clash isn't as simple as how good the values as a whole are, but how significant they are in terms of the resolution. Wow, that argument was a dense, confusing sentence, let's make it easier by talking about pizza.

I like pineapple on my pizza. I hope you do too, because that'd be awesome. For the sake of the example, let's pretend that you don't. I might say something like this: “You should agree with me that pineapple is great on a pizza, because pineapple is a fruit and fruit is healthy." I'm using "Health" as my value. I might go on to say something like this: "Because being healthy saves lives, helps people enjoy a higher quality of life, and prevents the spread of diseases, my value of health is the highest value in the room." If we were JUST talking about health, that might be a legitimate thing to say, but since we're talking about pizza, it's really kind of silly. I guarantee that eating pineapple on pizza has saved a grand total of 0 lives.

That example seems silly and far-fetched, but it happens all the time in debate. Over-simplifying the clash between the values turns it into a silly debate over whose idea is the coolest, instead of what side of the resolution is the correct one. That means every value clash should keep in mind the SIGNIFICANCE of the value in terms of the resolution. In the context of the pineapple pizza debate, the significance of health is so small, it's barely measurable. Thus, the judge has a very weak reason to vote for me, even though the principle of health in general is usually a very strong reason to make decisions. The same thing can happen when you chose a value like "Life," "Justice," "Human Dignity," etc. Keep in mind that the clash isn't about whose value is better, but about whose value is more significant in the context of the resolution. Pick your value based on what brings the most good to the resolution, not just the best general principle that backs up what you're saying. This also means that when you talk about the clash between your values, you aren't talking about which value is better (e.g. life vs. justice or security vs. wisdom) but whose value brings the most good to the resolution.

## What makes a strong value?

So after all that information about values and the resolution, we come to a final question: What makes for a strong value? Here are a few qualities that tie back to what we've already talked about:

1. Outline the conflict. Provide a weighing mechanism, and use a strong form of clash.
2. Build on the judge's desires. Be polar - either use a value that the judge wants or an anti-value that the judge wants to avoid. It's always weak to start from a position of controversy. It doesn't matter if you come up with a great case about how we should become communists, or how discrimination is actually okay, or about how ice cream is actually nasty (all lies). If you start the debate by pitting yourself against what the judge already believes, you're setting yourself up for failure. That DOESN'T mean you should lie about your beliefs to appeal to the judge, but consider avoiding setting yourself up for controversy when you go about writing your cases.
3. Brainstorm to find what best sums up the good in your side of the resolution. There's a lot of good things to be said about the letter of the law AND the spirit of the law. Find what best sums up your feelings about it.

Possibly the most surprising thing about debate (and this one never ceases to amaze me) is how the knowledge we apply to debate also translates into real life. Debate doesn't stop when you walk out of a round, the ideas behind choosing the right value for your case should also help you create a paradigm for what kinds of movies you watch, what kinds of friends you hang out with, what kinds of things you say to people, etc. I hope that this illuminates your understanding of value theory, or at least helps you to see it from a fresh perspective, and, (as always), stay classy.

Part II:   
Affirmative Cases

“Can’t Buy My Love (Or Justice)”

Value: Equality before the Law

By Emily Erickson

Introduction:

Thomas Jefferson once stated that, “our peculiar security is in the possession of a written constitution. Let us not make it blank paper by ~~construction~~ [interpretation].”[[34]](#footnote-34) The United States has always sought to protect liberty and justice for all, but as we all know, that isn’t an easy goal. However, I believe it is within our grasp as long as we realize as Jefferson did that our security must not rest in the whims of men whose “interpretations” of the law can be changed by lack of sleep, a bureaucrat’s pocket book the promise of power. Our security is only in unwavering accordance to our written law. For this reason I affirm the resolution: “In the United States federal jurisprudence the letter of the law ought to have priority over the spirit of the law.”

# Definitions:

**Jurisprudence:** “A system or body of law.” [[35]](#footnote-35) (Merriam Webster’s Dictionary)

**Priority:** “something that is more important than other things and that needs to be done or dealt with first.” [[36]](#footnote-36) (Merriam Webster’s Dictionary)

**The Letter of the Law and the Spirit of the Law are both defined by the Legal Dictionary: “**The strict and exact force of the language used in a statute, as distinguished from the spirit, general purpose, and policy of the statute.” (The Legal Dictionary) [[37]](#footnote-37) and “Spirit of the law refers to ideas that the creators of a particular law wanted to have effect. It is the intent and purpose of the lawmaker, or framer of the Constitution, as determined by a consideration of the whole context thereof. Spirit of law is determined form the letters and the circumstances surrounding its enactment.”

# Value: Equality before the Law

This is the idea that all parties involved in a legal matter should be treated the same. Individuals, families, groups, corporations and even states all have the same rights under the law and those rights must be equally protected in order to have a just judicial system. (Operational Definition)

## Value-Link: Upholds Natural Law

Natural law, which is the basis of codified law, dictates that everyone has equal rights. Rights are endowed to people simply because they are people, not because of how rich, poor, tall, short, smart or charming they are. If our rights are not equally protected in a court of law, our entire jurisprudence is a mistake.

# Criterion: Due Process

My criterion, or means of achieving equality before the law is due process, “a course of formal proceedings (as legal proceedings) carried out regularly and in accordance with established rules and principles’[[38]](#footnote-38) (Merriam Webster’s Dictionary)

## Criterion-Link: Due Process ensures Equality before the Law

If we always use the same established course for our judicial procedures, we can be sure that everyone will be treated equally in judicial procedures. Defendants are always given the right to retain an attorney of their choice- not sometimes, but always. Defendants are given the right to trial by jury- not sometimes, but always. Maintaining due process keeps a uniform system that upholds equality before the law.

# Contention 1: Prioritizing the Spirit of the Law Threatens Due Process

One of the biggest problems with prioritizing the “intent” or “purpose” of a law above the direct word of the law itself is that it can be incredibly hard to tell what the purpose of a law is. Judges with varied opinions will reach different decisions on the same cases all of the time if they prioritize the “purpose” of the law. We cannot have a uniform judicial system if we have judges making decisions based on what they “feel” the purpose of a law is. We can see a clear threat to due process because of judges using their own opinions about the spirit of the law in the application of the Repeal of the Defense of Marriage Act.

## Application:

The Supreme Court ruled that the Defense of Marriage Act was unconstitutional based on the “spirit” of the Constitution. The Defense of Marriage Act dictated that individual states could rule Same-Sex Marriage as valid, but other states as well as the federal government, didn’t have to recognize the marriage. This act, which was passed in 1996, was deemed unconstitutional by the Supreme Court on the basis that there is a federal, constitutional right to same sex couples receiving marital benefits. Though this is found nowhere in the letter of the law (the constitution) it was excused by Justice Kennedy as being in the “spirit” of the law. In other words, the Supreme Court added a right to the list of rights in the Constitution, even though the due process of writing law in the United States mandates that only Congress can add to or amend the constitution. Forbes Magazine writes of this decision, “It’s too bad Justice Kennedy wasn’t listening more carefully when President Ronald Reagan said at the justice’s swearing-in ceremony that, unless judges accept their role to interpret laws, not make them, “the words of the documents that we think govern us will be just masks for the personal and capricious rule of a small elite.”[[39]](#footnote-39) This repeal denied states the equal right to pass legislation unique to that state and it was founded entirely on the feelings of 5 people.

While there is a place for the spirit of the law, it cannot be given first place when judges make their decision, because so often it is simply used as an excuse for judges to make their own opinions law, destroying due process.

# Contention 2: Prioritizing the Letter of the Law Protects Due Process

When the judicial system follows the exact wording of the law we don’t have to feel like we’re gambling for justice. While it is impossible to make a flawless system, when we take laws at their face value, obeying their wording without fault we can be much more confident in a secure legal system. In the application of *Calabretta v. Floyd,* a case which came to the federal circuit court in California in 1999.Based on an anonymous tip, a social worker went to the Calabretta house to investigate without a warrant. Mrs. Calabretta, the children’s mother, refused to let her in until she came with a warrant. The children were standing at the door, and the social worker reported, “were easily seen and they did not appear to be abused/ neglected.” Later the social officer returned, with a police officer, demanding entrance once again. Mrs. Calabretta opened the door, only after they threatened to force their way in. The social worker proceed to question the twelve-year-old privately, and told the mother to remove the pants from her three-year-old. The Calabrettas sued the social worker and the policeman for violations of their rights under the Fourth Amendment. The Social Worker followed the spirit of the law, which is intended to protect the safety of children and investigate when tips come in, however she blatantly violated the letter of the law which demands that a search warrant must be obtained to enter a home without consent. The court ruled in favor of the Calabretta’s right under the letter of the law, to due process, and to their Fourth Amendment Rights. [[40]](#footnote-40)

# Conclusion:

While it is important for judges to understand the spirit of the law, it cannot be prioritized in court because it threatens our uniform system of dues process in America. Equality before the law is something more than an inspirational or fancy term. It’s a value that must be fought for to protect the rights of Americans. Only when we first follow the clear meaning and wording of our laws are we able to keep our system clean, efficient and trustworthy of providing liberty and justice for all.

Our peculiar security is in a written constitution, a written law, a concrete code that cannot be swayed like mortal men. Let us not make it blank by interpretation of the so called spirit of the law.

Negative Brief

# Framework: Value and Criteria

Equality before the law assumes that laws are good.

Due Process assumes that the law upholds justice.

Neither of these premises are explicitly stated or proven by the affirmative. Attack the idea that affirmative will actually be able to achieve this value through letter of the law. Even if they achieve it, is equality before the law a good thing? Is due process in an evil system a good criteria? If the answer is yes, then the letter of the law supports those negative ideas as well. Then prove that the spirit of the law has positive benefits.

# Contention 1: Defense of Marriage Act

It is necessary and proper for the United States to uphold the general welfare of its people. In Article 1, Section 8, Clause 1 of the US Constitution it states: “The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States”

For the proper meaning of this article to be understood you have to look to the spirit of the law. Marriage is a national concern because of the laws regarding marriage and taxes, and because of the economic ramification the relationship has. It is within the United States best interest to be concerned with the structure of the family for the purpose of general welfare.

# Contention 2: Calabretta v. Floyd

This is an awesome example of the law doing exactly what it is supposed to do: protect people. Just because the case involved a social worker does not mean the spirit of the law was being valued. You can turn the argument and say that the court upheld the spirit of the law by protecting the innocent citizens.

“Don’t Go Rock’n the Boat”

Value: Stability

By Jackson De Vight

# Introduction:

Imagine a world where a police officer would determine his response to a situation by rolling a dice. Imagine an economy where nobody knew what their house would be worth the next day. Imagine a system of government where the legislature said was law didn’t mean anything if the judicial system decided to change it with no warning to business or people. Although hyperbolic in theory, it is in the interest of stability and due process that I affirm the resolution: In the United States federal jurisprudence, the letter of the law ought to have priority over the spirit of the law.

# Definitions:

**Jurisprudence:** “a system or body of law”[[41]](#footnote-41) (Collins English Dictionary, 2014)

**Priority:** “something given or meriting attention before competing alternatives”[[42]](#footnote-42) (Merriam-Webster)

**Letter of the Law:** “The strict and exact force of the language used in a statute, as distinguished from the spirit, general purpose, and policy of the statute.”[[43]](#footnote-43) (West’s Encyclopedia of American Law, 2008)

**Spirit of the Law:** “the [principle](http://dictionary.cambridge.org/dictionary/british/principle) that a [law](http://dictionary.cambridge.org/dictionary/british/law), [rule](http://dictionary.cambridge.org/dictionary/british/rule), etc. was [created](http://dictionary.cambridge.org/dictionary/british/create) to make stronger, rather than the [particular](http://dictionary.cambridge.org/dictionary/british/particular) things it says you must or must not do: the [exact](http://dictionary.cambridge.org/dictionary/british/exact) words of the [law](http://dictionary.cambridge.org/dictionary/british/law) and not [its](http://dictionary.cambridge.org/dictionary/british/its) more [important](http://dictionary.cambridge.org/dictionary/british/important) [general](http://dictionary.cambridge.org/dictionary/british/general) [meaning](http://dictionary.cambridge.org/dictionary/british/meaning) (Cambridge English Dictionary) [[44]](#footnote-44)

# Value:

Today we need an external measurement of the resolution to determine whether letter or spirit of the law ought to be prioritized. The value that can best do this is **stability** defined as, “[a](http://www.macmillandictionary.com/search/american/direct/?q=a) [situation](http://www.macmillandictionary.com/search/american/direct/?q=situation) [in](http://www.macmillandictionary.com/search/american/direct/?q=in) [which](http://www.macmillandictionary.com/search/american/direct/?q=which) [things](http://www.macmillandictionary.com/search/american/direct/?q=things) [happen](http://www.macmillandictionary.com/search/american/direct/?q=happen) [as](http://www.macmillandictionary.com/search/american/direct/?q=as) [they](http://www.macmillandictionary.com/search/american/direct/?q=they) [should](http://www.macmillandictionary.com/search/american/direct/?q=should) [and](http://www.macmillandictionary.com/search/american/direct/?q=and) [there](http://www.macmillandictionary.com/search/american/direct/?q=there) [are](http://www.macmillandictionary.com/search/american/direct/?q=are) [no](http://www.macmillandictionary.com/search/american/direct/?q=no) [harmful](http://www.macmillandictionary.com/search/american/direct/?q=harmful) [changes](http://www.macmillandictionary.com/search/american/direct/?q=changes)” (Macmillan Dictionary)[[45]](#footnote-45)In order to help demonstrate that stability is the best value to use for measurement I will provide the following five Value Observation:

## Value Observation: Stability in Economics is Essential

In order for economies to function properly there needs to be a stable environment in which to exist.

1. **Investor confidence**: In order for investors to be willing to risk money in the market they need to be reasonably assured that they won’t end up penniless the next day. The stock market isn’t the lottery; people invest with the assumption that they are likely to get at least some of their money back. Without investors there is no such thing as a modern market economy.
2. **Budgeting Assumptions**: Pretty much everyone in the private sector makes some kind of budget. Those budgets are based off of two things: income and expenditures. Assumptions are made consistently about both. No engineer assumes that Boeing or Microsoft is disappearing along with their job tomorrow. In the same way, you don’t assume that bananas, toilet paper and chewing gum will be out pricing airplanes or computers anytime soon. In order for an economy to function the stocks have to remain at a reasonably steady rate.
3. **Stability is required for international diplomacy.** In order for treaties to be agreed upon by other nations those nations require a degree of assurance that the United States will not be substantially different in a month from now. This is especially true when nations entrust diplomatic missions to us, agree to high-vulnerability trade agreements, or make military and defense arrangements.
4. **Stability provides for structured change.** The United States is more than almost any other nation in history a nation of laws. Thereby one of the only nations in history whereby deep-set problems can be solved within the social system as opposed to the violent conflicts which have marked most such changes throughout history. This is a direct result of a stable form of government.
5. **Stability is required for preserving human rights.** Without stability modern law enforcement and concepts of human dignity are non-existent. If a policeman can’t assume that he’ll be paid he is unlikely to perform his duties well. If individuals cannot rely on law enforcement to protect their lives, liberty, and property they will take it into their own hands, even at risk of harming the rights of others. It is by such patterns that the fabric of modern society is torn with drastic consequences.

# Contention 1: Stability Requires Predictability

At its core, society is a set of shared assumptions which map out the predictable actions and reactions of the people around you. If those predictions are proved false to an extensive degree the stability of that society will quickly deteriorate. It is the letter of the law that provides predictability. The long-term nature of the traditional legislative process, as well as the vast scrutiny to which bills are subject helps relieve the shock that any new legislation can cause to a society. Each word is read long before the law is ever passed. Both the length of time required to pass a bill and the publicity to which it is exposed both function to make law making as predictable a process as possible. The interpreting the law by its exact letters are essential for stability.

# Contention 2: Judicial Legislating is Inherently Destabilizing.

Legislation by the judiciary is not only unconstitutional, it circumvents the normal means of lawmaking. First, almost all deliberations between the justices take place behind closed doors, meaning that nobody, not the press, not businesspeople, not advocates, nor concerned citizens have the foggiest clue how the most powerful legal minds in the nation are leaning on any given issue. This eliminates any predictability. Second, the justices rarely content themselves with making a strict decision, but rather add language creating law in the place of an overturned policy. Regardless of your moral convictions on the issue of abortion, it is this practice by the Supreme Court which resulted in the *Roe* v. *Wade* decision. That decision has been criticized ever since by experts and advocates on all sides of the issue for its massively flawed constitutional reasoning and shoddily justified judicial overreach. It is also this sort of behavior which threatens the legitimacy of the court itself. When justices make laws within their unchecked idea of the “spirit of the law” our political system is destabilized because there is nothing the public can do to correct these laws.

# Conclusion:

At the end of the day you as the judge need to know why the interpretation based on the letter of the law ought to be upheld over interpretation based on the spirit of the law in federal jurisprudence. Because of the vast range of cases the federal courts now hear the impacts of their decisions are far reaching and affect billions of dollars each year in business and helps shape the lives of millions of people. The judicial legislation, which has become increasingly more common in the last century, supplants the legislature’s right to legislate. If the court is free to decide what a law means based on subjective interpretation rather than what the law itself says why bother separating the branches of government in the first place? It is for all these reasons I urge an affirmative ballot.

Negative Brief

1. Stability can be construed to protect bad entities, such as racism or sexism. The courts harmed stability during the Civil Rights Movement, for the sake of justice, and did so in a manner most would consider to be justifiable.
2. The affirmative implies that following the letter of the law is an exact science, but as discussed in the Federal Jurisprudence article it is nothing of the sort. With literally billions of regulatory nuances and case law now extant interpretation of many sweeping topics requires some fabrication on the part of the judiciary if they are to do their job in the first place, never mind trying to reconcile often somewhat contradictory law texts.

“Do the Things for Less Vagueness and Stuff”

Anti-Value: Vagueness

By Noah Gray

*"Justice is a countercultural value in* [the] *legal profession."* [[46]](#footnote-46)As an American, I want to believe that our legal system is as great as the ideas that it was based on, but the reality is that our tolerance for vagueness in our legal system has polluted our great American ideals. In the words of Law Professor William Quigley, “*our legal system has replaced justice with other ideals*.” He goes on to say "*...everyone knows that justice work is not the essence of the legal profession. Our professional essence is money."* [[47]](#footnote-47) Today, I think we can do better than that. I believe that by choosing to eliminate some of the vagueness in our laws, we can avoid the pitfalls that have infiltrated our legal system. That's why I stand **Resolved: In the United States federal jurisprudence, the letter of the law ought to have priority over the spirit of the law.**

In order to know whether the letter or the spirit of the law should be upheld my **anti-value** of **vagueness** gives us a standard to evaluate our two options. Whichever side of the resolution does the best to avoid Vagueness in our jurisprudence deserves your vote.

Vagueness is a fitting anti-value in this round for two reasons, which are labeled as "value links."

# Value link 1: Vagueness opposes the goal of jurisprudence.

The goal of our legal system is to uphold justice, and vagueness is an obstacle to that goal. When we eliminate vagueness, we promote justice, and we fulfill the purpose of our jurisprudence.

# Value Link 2: Vagueness provides a weighing mechanism.

It's true that we have a tough job of making our cases, but as the judge, you have the hardest job today of deciding who to vote for. My anti-value of vagueness gives you a way of choosing between us, because only one side of this resolution will eliminate vagueness and promote justice, and I believe that THAT should be the basis for your decision.

In order to have the best possible conversation, it's important that we all have the same understanding of the terminology, so before I get into my main points, let's go over some of the definitions:

First, the idea of **Federal Jurisprudence**: Jurisprudence is the philosophy of law. In the context of this resolution, it means the ideas that drive our American legal system, specifically through the actions of the federal government, including common and statutory law.

We **prioritize** ideas like the letter of the law and the spirit of the law by placing more importance on one than on another. In many situations, the letter and the spirit of the law are the same, and in those situations, there is no need to prioritize one over the other. Prioritization, then, is expressed by choosing which one to adhere to when they conflict with each other.

**Letter of the law** means the explicitly stated denotation of the law, whereas the **Spirit of the law** means the inferred connotation of what the intention behind the law is. Put in the simplest possible terms, the letter of the law is what's actually written into law, and the spirit of the law is the assumptions and interpretations that stretch beyond what's written down.

And finally, **vagueness** in this sense means a law that is lacking in clarity or that doesn't have a clear interpretation. All definitions are operational.

I'm going to explain how choosing the letter of the law will help us eliminate the problem of vagueness with two main points or contentions:

# Contention 1: The spirit of the law creates vagueness.

The big problem with trying to interpret the intention behind a law is that the original intent of the lawmakers are completely unknowable; the only insight we have is what they actually wrote into the law. Because the spirit of the law is based on a set of assumptions, everybody - every civilian, every policeman, and every judge - will have a different interpretation of what the law is SUPPOSED to mean.

1. **Vagueness leaves room for bias.** Bias can occur among many lines: bias can be based on race, religion, gender, etc., but all forms of bias are an interruption of due process and stand in the way of justice. Bias frequently leads to a miscarriage of justice and wrongful imprisonment, such as was the case for Khaled El-Masri, an innocent German citizen who was captured, imprisoned, and brutally tortured by the American government for 5 months because of vague laws regarding suspected terrorist activities[[48]](#footnote-48).
2. **Vagueness discourages legitimate practice**. Many individuals and businesses are so afraid of vague laws that they will avoid legitimate activities for fear of being targeted. Take for example the story of Krister Evertson, a law-abiding citizen with a clean record who was run off the road by a SWAT team with weapons drawn and aimed at him because he legally sold sodium, but failed to put the proper sticker on the box. When he was acquitted of the charges, he was arrested again a few years later for safely and legally storing the same materials in a self-storage unit, which vague laws allowed to be classified as "abandoning" hazardous waste. Even though he was completely within his rights, the vagueness of the law allowed him to be arrested and jailed for almost two years.[[49]](#footnote-49)
3. My third and final sub-point is that the **spirit of the law is not self-correcting**. Who's to say that one interpretation of the spirit of the law is better than the other? Is the law different in every community? In every police department? In every courtroom? Because the spirit of the law leaves that door open, there's no opportunity for it to ever be corrected. When we prioritize the spirit of the law, we deny the existence of one accurate interpretation in favor of letting every decision-maker take the law into their own hands.

However, there's reason to take heart, because all of these problems can be fixed.

# Contention 2: the letter of the law eliminates vagueness.

Unlike the spirit of the law, the letter of the law speaks for itself. Prioritizing the letter of the law takes the guesswork out of staying on the right side of the law. When we prioritize the letter of the law, citizens know how to act, police know who to arrest, and judges and juries know who to sentence. Also unlike the spirit of the law, the letter of the law is correctable. All law will necessarily require interpretation, and there will always be a grey area in the law, but when we prioritize the letter of the law, we use the already-in-place methods of amending and adding to the existing written law, instead of leaving it up to the discretion of whoever enforces it. When the letter of the law is misinterpreted, it is corrected through the appropriate avenues, like amendments and appeals.

# Conclusion:

So let's return to the idea we opened up this discussion on: justice. How do we promote justice? And what's stopping us from achieving it? The vagueness created by prioritizing the spirit of the law is a clear obstacle to justice, and that's why I'd encourage you to vote for the affirmative, to vote for the letter of the law, and to vote for the justice that we can achieve when we eliminate the vagueness in our laws. Thank you.

Defense

All defenses are directly applied to the 4 Rebuttal points.

1. The letter of the law may not always output a perfect interpretation of the law, but it DOES allow us to pursue a correct interpretation instead of being content with vagueness (pull across 2nd contention). If we prioritize the spirit of the law, we're not eliminating any bad interpretations, we're only allowing them to all coexist together, and depending on who's doing the deciding. Even though the letter of the law doesn't necessarily guarantee the correct interpretation will be the one that gets put into law, it at least attempts to find the one true interpretation, and includes a path to improvement if the wrong interpretation is chosen.

2. It doesn't matter WHAT is being discouraged, it matters that in a country that's centered on freedom people are being intimidated into having their freedom restricted by a law's interpretations that have no basis in actual jurisprudence. Prioritizing the letter of the law can fix that problem.

3. That's not necessarily true. It can be seen as even limiting the control of government by closing off the borders of the scope of the law. There's inherently going to be grey areas in our jurisprudence, and prioritizing the spirit of the law keeps those areas grey, but prioritizing the letter of the law draws the exact line between black and white. Although it's possible that the line will be drawn in favor of more government control, it isn't our prioritization of the letter of the law that creates that problem, but our tolerance for government control.

4. Although it's true that reading, comprehending, and remembering 100% of the law is unlikely--if not impossible--there is no real situation that calls for complete knowledge of the law. It's better to have knowledge of exact law than to not be able to know the law. In the examples in the case, having a more specific "letter of the law" approach would have stopped the situations from spinning out of control. When laws are left up to the discretion of whoever's enforcing them, it's impossible to really know what's legal and what's illegal, and that's more important than knowing 100% of the law.

“Power to the People”

Value: Democracy

By Matthew Erickson

# Introduction:

“…liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments”[[50]](#footnote-50)~ Alexander Hamilton

History proves Hamilton’s assertion absolutely true. When the judiciary gives itself the power to interpret law in a way that contradicts the plain meaning of a statute or of the Constitution, they are fundamentally disrespecting democracy and thus threaten the freedom we hold so dearly. Because giving priority to the perceived spirit of a law rather than the plain wording of the text gives the judiciary just such power. I can do nothing but affirm this resolution: In the United States federal jurisprudence, the letter of the law ought to have priority over the spirit of the law.

# Definitions:

**Jurisprudence:** “The philosophy or science of law.”[[51]](#footnote-51) (American Heritage Dictionary, 2014)

**Spirit of the Law:** “Spirit of the law refers to ideas that the creators of a particular law wanted to have effect. It is the intent and purpose of the lawmaker, or framer of the Constitution, as determined by a consideration of the whole context thereof. Spirit of law is determined form the letters and the circumstances surrounding its enactment.” (USLegal)[[52]](#footnote-52)

**Letter of the Law:** “The precise wording rather than the spirit or intent.”[[53]](#footnote-53) (American Heritage Dictionary of Idioms)

**Priority:** “something given or meriting attention before competing alternatives”[[54]](#footnote-54) (Merriam-Webster)

# Resolutional Analysis: Priority doesn’t mean exclusivity

To give something priority means more than to consider it important. It means to give it first consideration. Thus, when we look at this resolution, it doesn’t ask us whether the spirit or the letter of the law is more important *per se*. It instead argues that we ought to first look to the plain meaning of a statute or statutes and see if that is sufficient. If not and there is still sufficient question as to the meaning of the letters, we can then look to secondary sources to provide clarification. Keep this distinction in mind as we continue, because it is essential to our understanding of jurisprudence.

## Value: Democracy

There are many reasons why we value democracy. Foremost amongst them is the relation between democracy and freedom. That is why my value link, or reason why democracy ought to be used to weigh this resolution is:

## Value Link: Democracy Promotes Freedom

The question is not whether the people are a perfect means of protecting their freedom. The question is whether a government held accountable to its people is more likely to protect freedom than one ruled by unelected officials. One need only look at the long history of failed despots to see that democracy, while imperfect, is truly one of our only tools with which we can protect our freedom. This is why Thomas Jefferson stated “people are the only safe depositories of their own liberty”. If you agree, then we should look at what methods of interpretation best promote democracy in the context of Federal Jurisprudence.

# Contention 1: Priority to the Spirit Increases Judicial Power

When considering the conflict between the spirit of the law and the letter of the law, many have a tendency to confine this conflict to the judicial branch alone. Ultimately, this conflict is truly one of how much power the judicial branch can assert. The “letter of the law” is not simply the words on a page, it the interpretation that prioritizes the common usage of the words therein. Those who prioritize the “spirit of the law” on the other hand assert that we ought to look give secondary sources like the statements from individual legislators, legal reviews, legal theory, or even the judge’s perception of justice itself when they conflict with the plain meaning of a text. To see how problematic this can be, we need only look to the legal concept that gave the spirit of the law priority in England: The Mischief Rule. The Mischief Rule stated that judges should look beyond the actual wording of a law and try to see what problem the law was trying to change. Elmer Driedger a premier authority on statutory interpretation write in his book *The Construction of Statutes:*

“[S]ixteenth-century common law judges…looked upon statutes as a gloss upon the common law, even as an intrusion into their domain. ~~Hence, statutes were viewed from the point of view of their effect upon the common law, as adding to it, subtracting from it or patching it up….~~

~~Then also,~~ in the time of ‘Heydon’s Case’, the judges paid more attention to the “spirit” of the law than to the letter. ~~Having found the mischief they proceeded to make mischief with the words of the statute.~~ They remodeled the statute, by taking things out and putting things in, in order to fit the “mischief” and “defect” as they had found them.”[[55]](#footnote-55)

When we give judges the license to define the spirit of the law, they inevitably take it upon themselves to not simply interpret the letters of a statute, but to ignore or change them.

# Contention 2: Increased Judicial Power threatens Democracy

The term that refers to judges effectively legislating is “Judicial Activism”. Judicial Activism often occurs when the courts invent a right that is not guaranteed in the Constitution and use this new right to invalidate legislation.

Probably the most infamous instance of this is the *Dred Scott v. Sanford* case. Dred Scott, an enslaved African-American, had been taken by his owners to a free state. The Supreme Court not only ruled that Dred Scott had no standing because African Americans could not be considered citizens, the case also overturned the Missouri Compromise, legislation that had been passed by congress making states (including Wisconsin where Dredd Scott was held) free. The case also essentially invented the right to own slaves by equating it with the right to hold property. As Dr. Robert P. George says “With no constitutional warrant, the justices manufactured a right to hold property in slaves that the Constitution nowhere mentioned or could reasonably be read as implying.”[[56]](#footnote-56)

This case shows the inherent danger of giving priority to the spirit of the law. Justices can manufacture what they feel a law, be it the Constitution or another law, meant to include. By barring Congress from making a decision on an important issue, it took power from the people, abused the principle of division of power, and as a result freedom was harmed.

# Contention 3: The Letter of the Law is more Democratic

When there is a problem with the laws in a country, ultimately only action by the legislative branches in our State and Federal governments can enact lasting change. This is because when courts legislate from the bench by changing the letters to fit their interpretation of the spirit of the law, their actions are those of an unelected elite that may or may not be articulating the will of the people as a whole. When the representatives of a people make that change however, the change is much more long lasting. This can be seen in the application of the Civil Rights Act of 1964. There had been attempts on behalf of courts in the United States to enact change, most notably *Brown v. Board of Education*. However, it was only after changes were actually made to the laws of our nation by congress that the Civil Rights movement registered its first major victory. One lesson we can learn from this is that people can fight all they want in the courts, but ultimately social change must come through the democratic process. Instead of reinterpreting laws because we don’t like them, we should respect law by making the necessary changes to it instead of ignoring it.

# Conclusion:

Federal jurisprudence is about more than just one branch of our government. It is about correctly valuing and respecting the form of government we have. When we give courts the power to play around with the meaning of words in the name of the spirit of the law, their power is increased and they are effectively allowed to legislate. Instead we should heed the words of Alexander Hamilton and realize that if courts stay to the task of applying the law, they will not be a threat to our freedoms. When they are given the power to change words in the law by looking to sources secondary to the law, they circumvent the democratic process. Instead, protect democracy by affirming this resolution.

Negative Brief

Democracy is not defined in this case, you are just expected to know what it means. This probably ought to be questioned. Is democracy a good idea? Is democracy even valued in the United States because aren’t we are just a democratic republic? If you have a value like Justice or Human Rights that is more intrinsically valuable, you will likely be able to win the argument that the form government takes is less important to jurisprudence than the results it creates.

The unspoken premise of this case is that we should look at both the spirit and letter of the law from the perspective of the form of government. Thus, when the affirmative argues that the spirit of the law increases judicial power, he is not arguing that the actual intent of the law was to increase the power of judges. The argument is that when you give judges the ability to decide cases on the basis of what they think the spirit of the law is, the byproduct of such a system is more power to judges.

Most negatives won’t buy the resolutional analysis piece slipped in here and you don’t need to either. Simply argue that in the case of (whatever application the affirmative is using), legislators didn’t intend for judicial power to be increased.

Part III:   
Negative Cases

“The Spirit of Justice”

Value: Justice

By Jewel Soiland

Ethiopian Emperor, Haile Selassie once said, “Throughout history, it has been the inaction of those who could have acted; the indifference of those who should have known better; the silence of the voice of justice when it mattered most; that has made it possible for evil to triumph.” It is because I agree with Emperor Selassie that one cannot simply ignore true justice, I stand negating today’s resolution that In **the United States federal jurisprudence, the letter of the law ought not to have priority over the spirit of the law.**

# Definitions

Before we examine the resolution in depth, let’s look at a few key definitions.

**Jurisprudence**: the science or philosophy of law (Merriam Webster Online Dictionary)[[57]](#footnote-57)

**Priority**: the condition of being more important than something or someone else and therefore coming or being dealt with first. (Merriam Webster Online Dictionary)[[58]](#footnote-58)

**Letter of the Law**: any formal code, rule, regulation, or principle that must be followed according to governmental mandates or policies (*Letter of the Law Verses the Spirit of the Law*)[[59]](#footnote-59)

**Spirit of the Law**: a social and moral consensus of the interpretation of the letter of the law (*Letter of the Law Verses the Spirit of the Law*) [[60]](#footnote-60)

## Resolutional Analysis: Priority, not exclusion

Per the resolution, we are examining whether the letter or the spirit of the law should take priority over the other. In other words, in situations of law enforcement, should we maintain a stance of always following the letter of the law, or should we look to the intention of the law to determine a right course of action?

## Resolutional Analysis: Spirit is Intention

The spirit of the law, as defined, is when we look to the intent of law to dole out punishment. The intent of law is to punish wrongdoers, criminals, and to ensure that each citizen of society receives due reward or punishment for their actions.

With the definitions out of the way, the value I champion today is **Justice**, defined as the administering of deserved punishment or reward (Dictonary.com). [[61]](#footnote-61)

## Value link 1: Purpose of Jurisprudence

Jurisprudence, as defined earlier, is the philosophy of law, or how justice is carried out. It determines what we do to ensure those responsible for crimes receive their due reward. Therefore justice is the purpose of the United States federal jurisprudence.

## Value Link 2: Essential to Order

Justice is vital to maintain in a society; without it, disorder, corruption, and violence take precedence. In the United States, the justice system is designed to determine how best to administer due punishment, but following the letter of the law, or exactly what the law tells us, has led to failings in the pursuit of justice. In order to realize true justice in society, we must not constrain ourselves to one method of castigation, which leads me to –

# Contention 1: The Letter of the Law is Unjust

While the letter of the law’s intentions to uphold Justice are noble, often it has failed to bring due punishment where deserving. Before we jump into applications, let’s examine a couple key observations about the letter of the law.

1. **The Letter of the Law Gives One Option**. When in accordance with the letter of the law, officers of justice are presented with only one way to properly act in situations that arise. Strict and precise, the letter of the law dictates exactly what protocol is acceptable and what is not, ensuring that ingenuity is prohibited and that there is only one option when pursuing justice.
2. **The Letter of the Law is Unforgiving**. Even when punishment is deserving, the letter of the law says that if law enforcement breaks a law or fails to uphold protocol, no action may be taken to prosecute the perpetrator.

For example, the Miranda rights, established in 1966 from the *Miranda vs. Arizona* Supreme Court Case[[62]](#footnote-62) and which everyone is read upon their arrest, are a mandatory step that must be taken by law enforcement.[[63]](#footnote-63) If this step, required by the letter of the law, is not taken, any evidence or statements collected may be thrown out of court. Even if a person is guilty and confesses their crime, the letter of the law would dictate that they would be acquitted. [[64]](#footnote-64)

Consider also the Plain View Doctrine. The Plain View Doctrine, part of warrantless searches by law enforcement, dictates that an officer may not conduct a warrantless search unless reasonably incriminating evidence is found *unintentionally*. If an officer encounters evidence *intentionally*, it is illegal to enter.[[65]](#footnote-65) Ironic as it may sound, these policies prevent criminals from receiving their just punishment.

# Contention 2: The Spirit of the Law is Just

Unlike the letter of the law, the spirit of the law seeks to bring justice by punishing those responsible. Unwilling to ignore justice simply because protocol was broken, the spirit of the law maintains the true purpose of jurisprudence.

In 2009, Ledger Willie Greene was accused of murder based on a 20 minute taped confession. But the judge in his court case threw out the evidence because he had not been read the Miranda Rights when arrested.[[66]](#footnote-66) The letter of the law says this is fine, but the spirit of the law would say Mr. Greene should have been convicted anyway instead of allowing a murderer to go free because police officers failed to read 3 lines of memorized text to him years earlier.

Other infractions of Miranda Rights have led to cases being thrown out of court, such as the significant marijuana cultivation case against Frank Frazza in 2013.[[67]](#footnote-67)

Unwilling to accept small infractions of regulation, the letter of the law fails to bring justice, relying on unforgiving protocol instead. The spirit of the law, however, seeks to uphold justice by pursuing the true purpose of the United States’ federal jurisprudence.

Brief

The philosophy of this case is that the letter of the law is too unforgiving in many situations to actually uphold the truth. But in the majority of cases, law has worked perfectly fine at establishing protocol that effectively punishes criminals and releases those innocent. Simply overloading the case with a multitude of counter applications would sufficiently discredit the idea that priority must be established by exceptions. In fact, priority assumes that we should look at the general picture, which would point to the letter of the law as perfectly acceptable.

Another area of attack is the limited number of applications. As the affirmative, you will probably have more and will be able to argue that yours outweigh your opponents.

Regarding the value of justice, the letter of the law is just as capable as the spirit at attaining it. In fact, the first point of resolutional analysis becomes null and void if the affirmative accepts the value of justice because it’s then axiomatic that it’s the purpose of jurisprudence.

The best way to accept the value and argue is to prove through applications that the letter of the law also, and more efficiently, results in justice being served.

With respect to warrantless searches, the fact that such a thing exists proves that warrants are not as restrictive as they claim to be. Even the letter of the law allows for loopholes to ensure that justice is served. Most types of warrantless searches, when there is probable cause for concern, lead to arrests and convictions despite not receiving an official warrant.

Concerning the Miranda Rights, there have been cases where, even though rights were not read, concessions have been made in a lawful manner to allow for convictions. The letter of the law is not so strict as to purposefully let criminals off the hook when a method of imprisoning them is available.

“I Meant What I Said”

Value: Normative Meaning

By Travis Herche

# Introduction:

Everything that is said in this debate round has a meaning. My opponent says things to try to convince you that the resolution is true. I’m about to say some things to convince you otherwise. But the very fact that we can do this – that we can come up here and give speeches, and say things that are in our heads so that you understand them – is a powerful thing. That’s the miracle of human communication. I believe that the fact that human communication is even possible is proof that the resolution is false.

# Value: Normative Meaning

This is a well-established philosophical idea. It is operationally defined as: “Represented general belief and/or usage.” Let me explain.

When you say: “The sky is blue,” the word blue is describing a certain color. In other languages, the correct word to use might be “azul” or “pulu.”[[68]](#footnote-68) The word “blue” is not any more or less accurate than “azul.” They are both correct; they are just different ways to describe a certain color. The important thing is the idea behind it.

That doesn’t mean that everything is decided by popular opinion. Gravity exists whether or not anyone believes in it. Normative meaning says that communication means what it is intended to mean – so when I say the word “gravity,” you know that I mean the scientific principle and not the Sandra Bullock movie.

# Reason to Prefer 1: Basis of Language

Without normative meaning, human communication would be impossible. We’re able to speak to each other because we learn how to identify what the other person intends. We use common languages and behaviors to send those signals to each other.

## Application 1: Thumbs Up

In the USA and Canada, a thumbs up gesture indicates approval, while thumbs down means disapproval. In Australia, the gesture must be moving downwards to be approving. In Iran, Iraq, and Thailand, the gesture is a very grave insult. In Turkey, the gesture will earn you only blank stares. The thumbs up gesture is also used by hitchhikers to mean “I want a ride.”

The gesture doesn’t have any intrinsic or correct meaning. In each part of the world, it means what it is supposed to mean. That’s how communication works. It’s a perfect example of normative meaning.

## Application 2: Soda

America is divided on the correct way to describe sweet, bubbly drinks. Some say “soda”; others say “pop”, others say “coke”. Again, the word means what it is intended to mean. That’s how I can have an idea about the resolution, make a bunch of sounds with my mouth, and expect you to understand them.

# Reason to Prefer 2: Basis of Jurisprudence

There are a host of philosophies surrounding law with three-dollar words like deontology and utilitarianism. They ask questions like: what is the purpose of the law? Where does it come from? How should it work? When and how should we punish criminals? How do we protect the innocent?

All of these questions – and all of the theories surrounding them – have one thing in common: they use normative meaning as a basis for their thinking.

So to summarize: this debate is possible because of normative meaning, and the topic we are discussing is built on a framework of normative meaning. It’s an indispensable concept for evaluating the resolution.

Now let’s dig into my two contentions.

# Contention 1: Letter has no Meaning

Reading the law based solely on the words – separate from what they are supposed to mean – is an affront to the whole notion of human communication. In the context of jurisprudence, the results can get ugly.

## Application: Americans with Disabilities Act

When the Americans with Disabilities Act was passed in 1990, it was intended to protect disabled Americans from discrimination in the workplace. However, it had one glaring flaw.

According to the National Center for Policy Analysis in 1996:

“The ~~1990 Americans With Disabilities Act~~ (ADA) failed to define what a "disability" is, leaving interpretation to ~~the Equal Employment Opportunity Commission~~, other regulatory agencies and the courts. As a result, businesses are confused -- unsure when they are, or are not, complying with the law.”[[69]](#footnote-69)

The lawsuits that followed tried to exploit the law by interpreting it in the strictest way possible – which rendered it meaningless. People were claiming disabilities with no idea whether or not they qualified for protection under the ADA. Employers lived in constant fear of a frivolous but successful lawsuit. Had everyone used the law as intended the chaos could have been averted.

Whenever you hear the term “loophole,” that means someone is trying to use the letter of the law to get ahead. Ultimately, the law means what it is supposed to mean, and that’s how it should be interpreted. That brings me to …

# Contention 2: Spirit is Meaningful

The principle of normative meaning tells us that the only true way to understand the law is in terms of its spirit. Every time a law works as intended, it is because it is being interpreted based on its spirit. That means there are tens of thousands of success stories for the spirit of the law every single day.

## Application: Speed Limits

Speed limits are imposed to protect every driver on the road by reducing the frequency and severity of traffic collisions. The letter of the law says that exceeding the limit is always illegal and should always result in a fine. However, police often choose to let offenders off with a warning at their own discretion. If the driver has a good reason for speeding – for example, if he’s rushing lifesaving medication home to his child – he won’t get a ticket. That’s because the spirit of the law is about punishing dangerous driving; it has room for forgiveness for good drivers in extreme situations.

An affirmative vote is an endorsement for gaming the system – finding ways to unlearn the incredible achievement that is human communication in favor of petty technicalities. A negative ballot means what you intend it to mean. Thank you.

Negative Notes

The “proper” name for the value is Normative Normativity. This is a deep and complex concept with ramifications in every area of philosophy. If you want to pursue this value, start by educating yourself in basic epistemology. Normative Normativity is briefly explored chapter six of *Keys to Lincoln-Douglas Debate*.

Remember that as with all negative scripts, you should never deliver it exactly as written. Adapt it to maximize damage against your opponent. For this case, that will usually mean adding or expanding your value reasons to prefer.

This is a value-centric case, meaning that your victory or defeat depends on the judge using your value to measure the round. Do whatever it takes to make sure the judge accepts it. One way to do that is to run it as a super-value, meaning it is an external measure for the framework. This is a more appropriate for many cases. For example, if your opponent runs rule of law, running the super-value of normative meaning will keep your opponent from being able to hit you with his value links. You’re claiming that they work hand-in-hand: rule of law is built on the shoulders of normative meaning.

The contentions write and sell themselves. If the debate shifts to your contentions – for example, if your opponent accepts your value – your negative rebuttal should sound like a victory lap. Unless the affirmative can come up with a clever alternate way to interpret the resolution, it is incompatible with Normative Meaning. Just talk about how thoroughly you won.

Affirmative Notes

If you have an application-centric case, you may be able to get away with accepting Normative Meaning as a super-value. If you do, be certain that you can reconcile your case logic with it.

There’s a very good chance that you’ll be forced into a value debate. If so, roll up your sleeves and win it. Run unique reasons to prefer and extend your strongest value links into reasons to prefer. Talk about how your value has practical use, is easier to understand, and is morally positive.

Persuasively speaking, you should try to characterize the negative case as inane philosophical rambling with no bearing on the round. You presented a serious series of arguments with court cases and experts. The negative wants to talk about thumbs up gestures. He’s wasting everyone’s time.

There may be room to execute a pure turn response on the ADA application. Claim that the failure of the law was to incorrectly assume that it would be interpreted as intended, while the best approach would have been to clearly articulate everything by defining “disability.”

“Red - A World About To Dawn!”

Value: Security, Criteria: Justice

By Andrea Johnson

# Introduction:

In Shakespeare’s famous play the Merchant of Venice, Antonio the wealthy merchant borrows money from a Jewish moneylender named Shylock on the condition that if Antonio cannot repay his debt on a specified date, Shylock may take exactly one pound of his flesh. The day of repayment comes and Antonio does not have the required money. But before his flesh can be removed, it is pronounced to Shylock that the agreement states that he can only remove flesh; not blood. Shylock realizes he is defeated and Antonio is released of his debt.

While we are happy that Antonio did not suffer such a painful fate, we can all agree that he still deserved punishment for not keeping his word. Instead, he was able to escape through a technicality in the “letter” of the agreement.

Placing too much emphasis on the letter of the law is absurd. And it is causing many like Antonio to escape punishment, while still others are given too much punishment. This compromises the integrity of our legal system, stripping us of the key elements of justice and security in our federal government. This is why I stand against today’s resolution.

Let’s clarify the round by looking at my definitions:

**Letter of the Law:** The strict and exact force of the language used in a statute, as distinguished from the spirit, general purpose, and policy of the statute. ([thefreedictionary.com](http://thefreedictionary.com))

My definition of **Spirit of the Law** is operationally defined as: The interpretation of a law based on the social norms of the current system.

# Resolutional Analysis:

## 1. Letter Often Equals Spirit

I’d like to make the clarification that the letter of the law does not always conflict with the spirit of the law. Many times they are one in the same and there’s no need for a distinction.

## 2. Spirit Takes Priority

However, we don’t live in a utopian society, and the letter does not always equal the spirit. Here’s where we get down to business. **When the letter of the law conflicts with the spirit of the law, the spirit should take priority.** The reason is this: the letter upholds the interests of the government; the spirit upholds the interests of the people.

This can be illustrated with the story of Jean Val Jean from Les Miserables. This man only stole a loaf of bread, but was serving the exact same sentence as the men who were murderers. Why? Because Javert, his captor, upheld the strict letter of the law when the spirit should have been upheld. This resulted Jean Val Jean losing much of his sense of security in his government, as well as justice ultimately being compromised.

Let’s go ahead and establish my value and criterion for the round today.

## Value:

Security - the state of feeling safe, stable, and free from fear or anxiety (google definitions)

## Criterion:

Justice- the administering of deserved punishment or reward (google definitions)

If justice is upheld and all men are punished according to their acts, our country will be a safe and secure place in which to reside. I will be showing you how upholding spirit of the law accomplishes these ideals in my two examples.

# Example 1: Equal Standard

Holding everyone to the same standard seems like the equal way to go, but it can actually be extremely unfair and ineffective. For example, imagine that I am an English teacher in a grade school, and there is one extremely advanced student and one student with a sever learning disability. Let’s say I give them the same exact book to read. This book is too hard for the disabled student, but it is much too easy for the advanced student. My goal as the teacher is to further the education of each student, but by treating them equally I’ve actually harmed the education of each, because now the student with the learning disability is not understanding the book and the advanced student is bored out of his mind.

Apply this to the federal government. Our government was put in place to serve and protect its people, NOT to treat each one equally. If we simply apply one standard or one letter of the law to every person, the government ends up harming all parties but not giving each citizen their just due. The standard of the laws **must** be applied to the social norms of the people, not to its own exact wording.

# Example 2: Commerce Clause

The Commerce Clause was put in place to regulate interstate commerce. But there were many other federal laws that stemmed from the Commerce Clause: human trafficking laws, kidnapping, illegal guns and drugs, to name a few. These are all beneficial and effective laws, but they would not be there had we strictly followed the letter of the commerce clause. Human trafficking and drugs, etc. were likely not as prevalent when the commerce clause was originally written, but because we allowed the norms of our current society to dictate the spirit of the clause, we now have a much more secure society.

# Conclusion:

The bottom line of it all is: when the letter of the law comes into conflict with the spirit of the law, prioritizing the spirit will always guarantee everyone their just due, creating a society in which security thrives.

Affirmative Brief

Logical relativity: The premise of the value and criteria is to prove that we will have a more safe society if we uphold justice. Justice is defined as “the administering of deserved punishment or reward.” Who is to decide what punishment for a crime is to be received? This has been a question that religions, philosophers, nor governments have been able to agree on since the beginning of time.

Turn: If the goal of the debate, as defined by this case, is to provide security in justice, wouldn’t the letter of the law be superior at achieving this goal? If the law is interpreted by flawed humans over the years the view of punishment will change quickly, while changes in language are much slower and are thus more secure. A prime example of this is through the debate of capital punishment. When America was founded capital punishment was readily accepted as a punishment for murder. However, in the twenty-first century many people think it is cruel and unusual punishment. The letter of the law lays out the exact circumstance of when a capital punishment is necessary; compared to the spirit of the law that could vary from judge to judge. The impact is that letter of the law is not always linked to security and justice.

It should also be noted that security is not heavily linked into the rest of the case.

“What Makes the World Spin?”

Value: General Welfare

By Cheyenne Ossen

# Introduction:

“We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

It is because neither the letter of the law nor the spirit of the law can single handedly bring about justice that I stand against the resolution: that in the United States federal jurisprudence, the letter of the law ought not have priority over the spirit of the law.

# Value Analysis:

Ultimately, we are here to have a conversation about what leads to the best form of constitutional interpretation. I believe the most accurate external measure of the resolution, or value, is that of general welfare defined by dictionary.com as: “the good fortune, health, happiness, prosperity, etc., of a person, group, or organization; well-being:”[[70]](#footnote-70) My Value Link, or reason why the General Welfare should be valued is:

## Value Link: Purpose of Government

Ultimately, we want our laws to bring about the welfare of society. Jeremy Bentham, the founder of utilitarian philosophy, was summarized by the Stanford Encyclopedia of Philosophy stating, “Actions are approved when they are such as to promote happiness, or pleasure, and disapproved of when they have a tendency to cause unhappiness, or pain.”[[71]](#footnote-71) The underlying concept of why we have law, and the interpretation of law, is to make society as pain free as possible. Think about it, you want to live in a country that is safe, that allows you to live your life to the best of your ability.

# Contention 1: The Letter and the Spirit do not Exist Independently.

The reason why the resolution should not be affirmed is because it makes you choose whether letter of the law ought to be looked at before the spirit of the law. It is similar to asking you whether the world or the fact that the world spins is more important. The world is wonderful, but we would all be dead if it did not rotate to expose different sides to the sun. Both the world and the spinning of the world is important, and you cannot chose which one should have priority over the other. In the same way, the letter of the law exists because of the spirit of the law. To look at the letter of the law without looking at its founding intent will not produce the correct interpretation, and if you just look at the spirit and disregard the letter there is no point to law.

# Contention 2: Proper Interpretation Seeks General Welfare

Every case must consider the letter and the spirit in context of the general welfare. A prime example of this is Wisconsin v. Yoder. Wisconsin’s compulsory school-attendance law required all children in the states to have a formal education until the age of sixteen. Amish parents refused to send their children to public school after eighth grade. They were convicted of violating compulsory attendance laws but claimed that their First Amendment right to free exercise of religion had been abridged. The court favored the Amish because, “Moreover, employment of Amish children on the family farm does not present the undesirable economic aspects of eliminating jobs that might otherwise be held by adults.”[[72]](#footnote-72) The court examined law, the spirit of the law (good education), but found valid reasoning for both to exist. Justice was found by seeking general welfare. As Nancy Rosenblum stated “Lawmaking must be recognized as a continual process in response to diverse and changing desires that require adjustment.”[[73]](#footnote-73) The impact is that you cannot give priority to the letter or the spirit of the law but instead the United States must give priority to general welfare.

# Conclusion:

In conclusion, in order to truly interpret laws correctly one must look at the effect that the letter and or the spirit will have on society. Neither can have priority because the letter of the law nor the spirit of the law can independently uphold general welfare.

Negative Notes

This is a ready to run, short case. With this comes a little extra work on your part when you use the case in a round.

# Definitions:

If you need definition either look to my article “What does it mean? Double Rainbow” or create a backup definition page (which you should have anyway) so that you can have the definitions that you think will clash best with your opponent.

# Resolutional Analysis:

This is a case that is neither supporting nor rejecting the spirit of the law. You have to clarify throughout the debate that you can legitimately disagree with the resolution and not support letter or spirit of the law. It is your job as the negative to prove the resolution false.

# Contention 2:

You may feel like this contention supports the spirit a little more than the letter of the law. Within this application you can find valid reasoning of the letter and the spirit both being examined, however, it is more of a spirit of the law case. After listening to the affirmative for six minutes your judge knows that there are valid reasons to prioritize letter of the law. It is your job to show that they cannot have priority over each other. This application will remind your judge that the spirit is extremely necessary as well.

# Dealing with refutation:

It is YOUR JOB to refute the affirmative case by proving that in their applications you cannot see where letter of the law was preferred to the spirit of the law.

Affirmative Notes

This is an extremely hard case to refute in the since that the negative does not necessary disagree with you, but is trying to take your ground.

## General Welfare:

What are the pitfalls of a society valuing general welfare? Example: tyranny of the majority. The negative wants our entire legal system to be interpreted in a way that promotes what is best in that moment. This creates a very fickle system because society’s opinions change so often.

## Resolutional Analysis:

Do not whine about the way the negative has chosen to interpret the round. It is a valid interpretation. Focus on what the *priority* is: the letter of the law or the spirit. We are looking at what *ought* to have *priority*. Then work on the application battle and prove that the letter of the law needs to be considered first.

## Contention 1:

This is an analogy see if it truly fits into the resolution. Do we really need to decide if the spinning of the world came before the world itself?

## Contention 2:

Turn this application. They court upheld the letter of the First Amendment.

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