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-AT “must grant me permissibility”

-AT nina’s shell: “can’t read stuff from constitutional interpreters”

# AC

1. Presume aff because affirming’s harder. From 12 thousand rounds last year affs lost 7% more frequently[[1]](#footnote-1). Prefer stats since there are an infinite number of analytic side bias arguments but stats determine whether they actually end up skewing rounds. Also, resolved[[2]](#footnote-2) means “firmly determined to do something,” which means the res has already been proven true. This means you reject theory not weighed against side bias, since something that is slightly abusive is actually good because it just corrects for the side bias.

2. Accept aff definitions. A. there are multiple interps of the topic and the neg is reactive to the aff, so they can always be prepared to debate under it B. the neg can always call for alternate definitions, killing topic discussion because negs are incentivized to always layer the case debate with T and skews time because 1ARs are always forced to restart.

3. If I prove the neg can engage in the same practices they theoretically challenge, then that is sufficient to answer theory and prove no abuse: A. There are multiple legitimate interps of the topic and the aff goes into the round blind. I had to choose between mutually exclusive interps and the neg can always read theory and T so don’t punish me for having to set grounds B. Fairness is a relational concept since it dictates that what I’ve done you cannot, but if you have access to the same arguments, that proves that those practices are fair since you aren’t precluded from accessing them.

4. If the resolution is permissible, then affirm, since proving statements permissible would prove that they’re not obligatory, which coheres with the “ought not” part of the resolution. The neg’s burden is to prove that speech ought to be restricted, which can only be proven in the case of an absolute obligation; absent such an absolute obligation, you’d have to affirm since you’re not obligated to do anything.

Next, framework:

Public colleges ought to follow government law:

A. Any rule can be interpreted an infinite number of ways, rendering it impossible to know in the abstract how to truly meet the rule. Social practice and how language is used solves. **Langseth**:[[3]](#footnote-3)

 “Over time and in the context of a society, repetition of action becomes a custom, instituted as communal regularity.Rules and rule-following are only possible in the context of a community because **what constitutes correct application is determined by agreement.** “The word ‘agreement’ and the word ‘rule’ are related to one another, they are cousins.” The justification for correctly following a rule is found in agreement and practice, **by acting in such a way that appears in accordance with what is expected** (and such agreement may be reached by either consensus, force or authority). What mental processes occur in an act have no explanatory value in justifying correct rule-following. It was shown in Wittgenstein’s critique of what constitutes correct rule-following that it is possible to follow any number of rules and still act in accordance with expectation, and this may be exactly what we do In this sense: “I (we) obey the rule blindly,” for it is never known, beyond the recognition of agreement and acceptance of action, whether or not we adhere to some strict, set-in-stone, definitive rule; for there is no such thing.Rules are placeholders for an expected path of action. We “catch on” to what is expected because by continued approval of a specific action given a specific rule, we reach the belief that such an action is right or correct.Language is a practice with correct and incorrect usage. Therefore, it is a rule-governed behavior. Prior to Wittgenstein, most philosophers believed that meaning is what justifies correct language use and that it is something which stands outside of ctual practice as arbiter of that practice. For example, Platonists argue that the meanings of words such as “justice,” “good,” and “truth” are defined by some standard independent of experience, by some form “projected,” as it were, into the world of experience. The philosopher need only discover the form of justice, good or truth in order to determine whether use of these terms is correct or not. But Wittgenstein argueslanguage is a tool, an instrument (like a hammer or money), which enables us to get things done. And it is only **in what we do with words**, how they are used as tools, that **we** can **get a sense of what they mean.** The rules that allow effective use of language have been shown to consist of the customary and habitual nature of practice itself. If meaning is said to be what justifies correct language use, then meaning is grounded in practice. Wittgenstein calls attempts to locate meaning in some antecedent, prescriptive formulation “entanglement[s] in our rules.” Such attempts mistake the nature of meaning. Wittgenstein wants to show that philosophical problems rest on this mistaken assumption of the nature of meaning. The error of philosophers, says Wittgenstein, is in their belief that some words such as “truth,” “reality,” “justice” and the “good” have meaning beyond their use in practice. By pointing out this mistake, Wittgenstein wants to cure philosophers of the belief that there are purely philosophical problems. Traditional philosophic questions such as “What is the nature of truth?” or **“What is** the **good?”** etc., **cannot be given an answer resting on anything outside of the practices in which the**se **words are used.** There is **nothing outside of use** that **can justify correct use.** The task ofphilosophy, says Wittgenstein, should turn to investigating how language is used in everyday life, and in this investigation it should be descriptive, not prescriptive. Philosophers have hitherto been entangled in a misunderstanding of the nature of rules by looking for some prescriptive theory with which to compare the use of language in practice – but there is nothing beyond the practice. If philosophers wish to locate the meaning of language, says Wittgenstein, they can only describe the variety of practices in which language is used.”

Laws determine acceptable social practices. **Mihilzer**:[[4]](#footnote-4)

Because justification and excuse embody transcendent and distinct moral principles and norms that define a culture through its laws, it is imperative that the positive criminal law derived from these sources should do likewise. As always, doing this would contribute to the legitimacy of the positive law and provide important moral guidance to society. But these benefits take on added, even critical importance in contemporary America, where morality is often viewed as being relative and situational, rather than transcendent and universal.584 Indeed, given the diversity and dynamism of contemporary American society and culture, there is little, if anything, that seemingly commands overwhelming popular acceptance as being an immutable moral truth. Certain **abstractions about** freedom, equality, representation and the like are widely trumpeted as being genuine American first **principles**, but even these **appear to lack objective content** and substance **when** they are **extracted from the laws** and court decisions **designed to define** and protect **them. Without a**n authoritative **legal imprimatur, any tangible expression of moral principle is** seen as being **merely one of many competing** philosophical or political **views**, which is objectively entitled to no more or less respect than the next. One person’s conception of freedom is another’s denial of equality, and so on. In the normative vacuum of contemporary American culture, the positive **law and public morality have become increasingly synonymous.** The criminal law ought to be popularly understood as expressing prudential judgments about what is to be prohibited and, to a lesser extent required, consistent with underlying truth. It is instead now popularly seen as actually constituting the underlying truth. Put another way, the law is not understood as prohibiting behavior because it is wrong; the **behavior is seen as wrong because the law prohibits it.**

Absent social practices, we would be unable to derive moral value, since moral principles would be infinitely regressive, and so we’d never be able to determine what’s good and bad. If the aff posits a rule, be it a moral statement or a theory interp, they must explain how the rule is socially interpreted to solve for Langseth’s paradox, otherwise we have no way of knowing what it means to violate it.

B. Ought refers to a relationship between the law and empirical conditions. **Kelsen**:[[5]](#footnote-5)

Both cases involve simply the expression of a functional connection of elements, the connection specific to the respective system—here nature, there the law. In particular, even causality represents only a functional connection when one frees it of the metaphysico-magical sense originally attached to it by man, still entirely animistic and imagining in the cause some secret force creating, out of itself, the effect. A causal principle thus purified can never be dispensed with in the natural sciences, for what is manifest in the principle is simply the postulate of the intelligibility of nature, a postulate that can be approximated only by linking the material facts given to our cognition. Laws of nature say: ‘if A is, then £ must be.’ Positive laws say: ‘if A is, then B ought to be.’ And neither the laws of nature nor positive laws have said anything thereby about the moral or political value of the connection between A and B. The ‘ought’ designates a relative a priori category for comprehending empirical legal (p.25) data. In this respect, the ‘ought’ is indispensable, lest the specific way in which the positive law connects material facts with one another not be comprehended or expressed at all. For it is obvious that this connection is not the connection of cause and effect. It is not as the effect of a cause that punishment is set for a delict; rather, the legislator establishes between these two material facts, delict and punishment, a linkage that is completely different from causality. Completely different, but just as inviolable. For in the system of the law, that is, owing to the law, punishment follows always and without exception from the delict, even if, in the system of nature, punishment may fail to materialize for one reason or another. Where punishment does materialize, it need not occur as an effect of the delict, functioning as cause; it can have entirely different causes, even if, indeed, the delict has not taken place at all.

Precludes and frames the debate – all framework debates stem from the definition of ought, which relates to legal arguments.

Public colleges and universities are extensions of the state, and therefore must follow the Constitution, which is the instantiation of the law. **Farlex**:[[6]](#footnote-6)

Three general types of laws affect the operation of colleges and universities. State laws affect public and private colleges and universities in the absence of federal laws that supersede them. Federal laws may affect public and private institutions, and they usually affect entities that receive federal funding or that are subject to regulation under the Commerce Clause of the Constitution. The most common such laws are statutes that prohibit discrimination. Finally, the Constitution governs public, but almost never private, institutions. As state entities, public institutions must conform to constitutional provisions that prohibit the state from discriminating and from denying constitutional rights. Thus, much of the law of public institutions stems from constitutional amendments such as the following: the Free Speech Clause of the First Amendment, which guarantees that the government will not interfere with Freedom of Speech the Free Exercise Clause of the First Amendment, which ensures that the government will not interfere with or outlaw religious expression the [and] Establishment Clause[s] of the First Amendment, which prohibits the government from endorsing or establishing a state religion the equal protection clause of the Fourteenth Amendment, which guarantees that a state will enforce its laws equally with respect to all persons, with certain exceptions

Therefore, the standard of **consistency with the United States Constitution**. My standard comes first since it allows us to learn about domestic laws that apply to us and literally determine how we can live. It’s more educational to study Court cases that affect us every day. Real world preparation is key and outweighs since it’s the function of schools.

Next, prefer my standard:

**1.** The very concept of a “constitution” is something that public colleges are obligated to follow – otherwise it would be like writing a rulebook that people aren’t supposed to follow. Thus, the fact the public institutions have an obligation to follow the constitution is necessarily implied by the concept itself. **Searle**:[[7]](#footnote-7)

**Once we** recognize the existence of and begin to **grasp the nature of** such **institutional facts, it is** but **a short step to see that** many forms of **obligations**, commitments, rights, and responsibilities **are** similarly **institutionalized.** It is often a matter of fact that one has certain obligations, commitments, rights, and responsibilities, but it is a matter of institutional, not brute, fact. It is one such institutionalized form of obligation, promising, which I invoked above to derive an "ought" from an "is." I started with a brute fact, that a man uttered certain words, and then invoked the institution in such a way as to generate institutional facts by which we arrived at the institutional fact that the man ought to pay another man five dollars. The whole proof rests on an appeal to the constitutive rule that to make a promise is to undertake an obligation. We are now in a position to see how we can generate an indefinite number of such proofs. **Consider the following** vastly different example. We are in our half of the seventh inning and I have a big lead off second base. The pitcher whirls, fires to the shortstop covering, and **I am** tagged out a good ten feet down the line. The umpire shouts, "Out!" **I**, however, being a positivist, **hold my ground. The umpire tells me to return to the dugout. I point out** to himthat **you can't derive an "ought" from an "is." No** set of descriptive statements describing **matters of fact**, I say, **will entail any evaluative statements** to the effect **that I** should or **ought to leave the field.** "You just can't get orders or recommendations from facts alone." What is needed is an evaluative major premise. I therefore return to and stay on second base (until I am carried off the field). I think everyone feels **my claim**s here to be preposterous, and preposterous in the sense of **[is] logically absurd.** Of course you can derive an "ought" from an "is," and though to actually set out the derivation in this case would be vastly more complicated than in the case of promising, it is in principle no different. **By undertaking to play baseball I have committed myself to the observation of certain constitutive rules.** We are now also in a position to see that the tautology that one ought to keep one's promises is only one of a class of similar tautologies concerning institutionalized forms of obligation. For example, "one ought not to steal" can be taken as saying that to recognize something as someone else's property necessarily involves recognizing his right to dispose of it. This is a constitutive rule of the institution of private property. "One ought not to tell lies" can be taken as saying that to make an assertion necessarily involves undertaking an obligation to speak truthfully. Another constitutive rule. **"One ought to pay one's debts" can be construed as saying that to recognize something as a debt is necessarily to recognize an obligation to pay it.**

And, if the constitution isn’t morally relevant, it’d be impossible to vote neg since it would then be nonsensical for the US to even want to restrict speech since speech just wouldn’t be classified as constitutional or not.

**2.** When states agree to a contract, they have expectations about what state of affairs they want to come about. If this weren’t the case, then the only way to derive purely empirical value would be to appeal to a teleology inherent to all states of affairs because you could not derive value from the preferences of each agent. But that would mean it’d be impossible to negate because the teleological standard that brought about the contract would be the only standard to determine that the legitimacy of that contract, meaning that contract would be definitionally obligatory.

**3.** My standard is the only binding source of ethics for public institutions as it ensures they’re bound to follow through with their agreements. Rules between these institutions and citizens aren’t truly binding because citizens can’t hold the institutions as accountable as other ones can, since they lack the funds and force necessary to do so. That implies that conflicting rules make debates irresolvable, since there’s no way to weigh between such rules. Without my standard morality loses its normative force to guide action.

Further, the Constitution is already established as possible and plausible since we’ve used it for 200 years, so defaulting to it is most realistic. That means that if the framework debate is uncertain, use the aff’s.

Affirm:

1. If my framework is true, then it necessarily follows that you affirm since the way the resolution is worded makes it such that if the framework proves that public colleges must unconditionally follow the Constitution, then it would follow that they may not restrict any constitutional provisions at all. The resolution explicitly says “constitutionally protected speech,” meaning the obvious conclusion of my framework is that you’d affirm.

2. The Constitution is the primary aim of the US government and dictates all legal action within the US. **Kahn**:[[8]](#footnote-8)

In the American constitutional frame, popular sovereignty and the rule of law are a single phenomenon constitutive of the national political identity. The rule of law, which begins and ends in American life with the Constitution, is the self-expression of the popular sovereign. The Constitution is the source of all law-making power, and every assertion of a legal rule can be tested against the Constitution.

Also proves that public colleges must follow the Constitution and all its dictates, since it proves that all legal actions that any institution takes must follow the document.

Underview 1 is the Obligation of the Judge

**The role of the ballot** is to vote for the debater who best proves the truth or falsity of the resolution on a post-fiat level. The aff’s burden is to prove the res true, the neg’s is to prove it false. Any aff argument that proves the truth of the res would thus be sufficient to affirm. Prefer:

[deleted]

# Underviews

## Theory

Aff unconditionally gets 1ar theory and metatheory: you cannot contest my ability to read them in any way, else you’ll spread me out, be infinitely abusive in the NC since I can’t check abuse, and read shells I can’t engage, preventing me from forming a path to the ballot. Drop the neg on theory since I can’t beat back an abusive NC strat if I need to win theory and substance too. Fairness is a voter: debate’s a competition governed by rules. You can’t know who debated better if the round is skewed, so fairness is a gateway to debate.

Neg abuse outweighs aff abuse: A. The aff has to reserve the right to collapse to one layer in the 1ar because it is too time crunched to win multiple layers. B. The neg will always win the weighing debate because of the 6 minute 2nr. The only way to give the aff even a chance of winning is to grant that their abuse story comes first. Otherwise, the 2n can just sandbag 6 minutes of weighing.

Redefine the aff under neg T or theory: A. competing mutually exclusive interps make it possible for the neg to always read theory to avoid substance since the aff enters blind, B. T interps are just paradigms for how we debate so winning one isn’t a reason to exclude my offense if it still is applicable. C.If they’re reading theory on preemptive AC theory that’s a reason to reject the preempts since the preempts constrain what they could do so their theory isn’t offensive, it’s just a reason they shouldn’t be constrainedD. time skew makes it so it’s impossible to win theory and substance in the 1AR. Re-evaluating my offense under their interp solves by bringing the round to one layer. Also means drop the neg on theory since I can’t beat back an abusive NC strat if I need to win theory and substance too.

Just ignore aff theory that the neg beats back: A. 2n collapse on aff theory makes it impossible for the aff to recover in the 2ar- even splitting time between theory and substance in the 2n means the aff has to cover both in half the time B. 1ar is time crunched between 7-6 minute speeches, means it’s impossible for the 1ar to recover enough to give a 2ar.

## K

[deleted]

# Theory Frontlines

## Extensions

1. #2 spike in o/v – they could’ve engaged in the practices they indict

2. Searle and truth testing take out theory

## Langseth Extension

[Only if I’m not reading/extending theory] Extend Langseth, that rules are always infinitely interpretable, and you can never be sure of the correct way of interpreting one. Theory is definitionally a rule – it says that debaters must act by whatever the interpretation says. The analytic underneath says they have to explain how theory solves for this, [explain why they don’t/why responses insufficient] but their response doesn’t prove that. That means theory goes away and the only thing left to evaluate is my framework, which I say solves via Mihilzer

## AT Descriptive Standards Bad

Overview:

1. Extend from the top of the aff that neg theory goes away if I prove they can engage in the practices they indict – they could easily have read a descriptive standard too, be it constitution or emotivism. That means their shell goes away.
2. I meet – my framework is prescriptive since I only justify how there’s an infinite interpretation of laws and why public colleges have a functional obligation to uphold the constitution.

Counterinterp: the aff can read descriptive standards

1. Real World Education: we learn about how current states of affairs can be interpreted, and we’re forced to think harder in our interpretation of documents like the constitution or UN charters. We also get legal education via my aff- we learn about how people think differently about legal documents. Legal education outweighs other education – extend that 40% of debaters who think about their careers plan to be lawyers**[[9]](#footnote-9)**. That was conceded, outweighs on strength of link too.

Education outweighs fairness: **a)** there’s always some level of unfairness based on out-of-round factors, so you can never be absolutely fair, **b)** education is going to matter far longer – 30 years from now I won’t care if the round was far, I’ll care if I learned something, and **c)** Schools will not fund an activity that is becoming progressively less educational, so there’s no debate to worry about the fairness of if it’s uneducational.

### AT Turn Ground

1. Prove it’s inconsistent with other decisions, the aff isn’t a clear cut issue, there are a bunch of weighing arguments like textualism, supreme court precedent, and framer’s intent, that you could’ve made
2. No abuse: framework is an option for you, no reason why turn ground is uniquely key if you can kill my framework
3. T/ there are no arguments that aren’t based in some descriptive fact about the world. When you read an author or a framework, it is always true that it minutely advantages one side. For example, when reading a Korsgaard case, she descriptively believes the res flows one way. This outweighs their ground loss because they are just claiming they have a slight decrease in quality of ground. My argument is that descriptive standards bad would preclude ALL framework ground.
4. No abuse, they can concede constitutivism and just link a rule that the U.S. ought to abide by back into constitutivism or a descriptive standard. For example Langseth or Schapiro

## AT 2NR Responses

### General

1. No warrant for the distinction between AC theory spikes and normal args – you never know the impact of an AC framework arg because I might extend it as interactive with the NC. Impacts: A. Takes the arg out because it would lead to absurd conclusions like the 2NR can respond to uncontested AC arguments. B. At worst, if his spike is true, then it’s non-unique since the warrants aren’t aff-specific, meaning he justifies why I get new responses to NC arguments in the 2A.

2. If the argument is true, i.e. you’ve conceded a paragraph theory shell, then you cannot respond to that – you can only respond to the impact, so drop the debater or arg.

3. Debate would look terrible – if we abandon the maxim that conceded args are true, there would be no clash because then you could just respond to any arg later. Outweighs because we need debate.

4. It’s pragmatically bad – rounds are too short. There’s only one speech after the 2N to respond, so A. I have half the time as the 2N B. the round is irresolvable.

### AT Strat skew

1. Turn - I only have one 3 minute speech to 6 for new responses. That’s worse -
2. No strat skew – you only get to respond to the impact part anyway, but you cannot respond to the

### No 2NR weighing

1. The 2NR can just read long scripts that I can never prepare for or overcome, meaning that the 3 minute 2AR that has half the time of the 2NR is uniquely difficult.
2. The 2NR can always shift the implication of the NC shell, supercharged by the 6-3 skew between the 2N and 2A.

# K Frontlines

## Extension

1. Extend Langseth, takes out your role of the ballot since your ROB is a rule for how our debates should carry their debate. Means the rest of your K is irrelevant since it all links into the ROB
2. Mihilzer says the social practices you deem acceptable can only be interpreted via laws, so that means that ilaw comes first since it frames your K, since social practices determine what kind of arguments are ok to make

## Perms

1. Perm do both
2. Perm do the alt in all instnaces but the aff
3. Perm do the aff then the k
4. Perm double bind
5. P/ Aff in round, alt bad bc we have more time to discuss alt
6. P/ aff but put alt on ballot
7. Perm first vote for me to establish the aff and if it doesn’t solve for the harms, then vote me

## Truth Testing Extension

Your practical disadvantages with truth testing aren’t competitive with my argument, so there’s no impact to them – extend that it’s the only paradigm consistent with the judge’s jurisdiction. That means it’s the only one that’s possible for them to use regardless of however it’s bad, and even if they use another one, my argument is that judges should stick to what is within their jurisdiction.

### ROB Weighing

My role of the ballot is truth testing, which outweighs alternate ROBs:

1. Jurisdiction: your rob presumes the jurisdictional ability to evaluate it in the first place, but the best way to fulfill that ability is through judge’s truth testing, which is the only rob that textually meets the res.
2. All statements posit that something is true or false, conceding to the ultimate importance of truth and falsity, means that all ROBs collapse to mine.
3. Ground: I include the most arguments – literally nothing is excluded, whereas yours arbitrarily permits and excludes certain arguments we make.

### Theory Weighing

Outweighs theory:

1. Theory doesn’t prove the truth or falsity of the res, but rather whether an action was abusive, or whether my actions might have affected the ability to determine the truth of my arguments, but those things aren’t relevant in proving the resolution’s truth.
2. ROB determines the ultimate obligation of the judge and why we’re debating, so we don’t even care about theory’s function unless we have the rob to contextualize theory.

## AT Colonialism K

Overview:

1. [Read FW Extension Above]

2. You have to weigh the tradeoff between a historically colonialist group and a dictate that free speech is good– it’s intuitively true that constitutionally protected free speech should be a right.

### Link

1. No link: I don’t defend the past consequences of the constitution, only its current descriptive state
2. Turn: constitution ensures that states aren’t arbitrarily excluded from decision making processes since at least they have a say – they can form blocs in Congress and challenge powerful people
3. You link: your authors are all westerners, they all fall into the same category of people who have supported the constitution in the past and who you criticize.

### Alt

1. Turn: This does nothing to change our mindsets about constitution and power relations
2. Untrue, constitution has helped people who are at the mercy of the nations with power. The South China Sea is an example

# FW Frontlines

## AT State’s Aim = Something Else

1. They are making an empirical claim without an empirical warrant. Constitutivism is descriptive since it is making a claim about the natural aim of an agent. My state department card is an empirical claim from the government about its function.

2. My evidence outweighs because it is a claim directly from the government itself. Agents can have differing aims, so the best way to determine the specific aim of an agent is from the agent itself.

3. The constitution outweighs because even if the state has other aims, none of those aims make sense absent a legal practice like constitutionality. The constitution defines all of our other aims, so they are secondary.

*At worst this just means the state has multiple conflicting aims that we have no way to prioritize. Since the resolution is a question of aims of agents that would mean constitutivism triggers presumption because there would be no way to prioritize between differing state aims/actions. Extend presume neg…*

## AT State’s Aim = Own Existence

1. This is the definition of affirming the consequent. Just because maintaining its own existence is necessary to have an aim, doesn’t mean that protection is sufficiently the aim of the state. Since the aff has to prove an obligation, that means his link into constitutivism is a necessary but insufficient burden for him.

2. Fallacy of Origin. Just because the source of all state aims is the fact that the state exists, that does not mean state existence is objectively valuable.

3. Self-defeating. The only reason maintaining the state’s existence would be good is so that the state can have an identity. But since there will always be some miniscule threat to our existence, we will be caught in a cycle of always combatting security threats, preventing the US from actually developing an identity, which is the reason for imposing that aim in the first place.

# Contention Frontlines

## Weighing

### AT Framer’s Intent

**First**, there were multiple framers, so each of them had their own individual intent. This is empirically proven because all framers wanted to add different parts for their own individual reasons. It is completely arbitrary to preference the intent of framer over another since they have similar contributions.

**Second**, politicized education and history has meant that each framer’s intent has been bastardized to the point where we have no way of knowing the true intent. Their card, which claims framer’s intent, affirms could be based upon generations of authors that have molded intents to prove their positions.

**Third**, the idea of framer’s intent is contradictory, because the framers knew that people would read and interpret the constitution in the future not knowing the legislators mindset, and planned accordingly – part of their intent was to have the text stand by itself.

### AT Supreme Court Precedent

**First**, the constitution is the source of all authority, but nowhere does it empower the Supreme Court to be the arbiter on what the constitution says – in Marbury V Madison the Supreme Court gave itself that authority without any basis for that authority, meaning arguments based in precedent are circular.

**Second**, precedent is irrelevant because it can change over time, but the resolution doesn’t have any time frame so any precedent based argument can’t answer the long term question of the resolution. This means that arguments based in Supreme Court precedent are irresolvable because it can always change.

### AT Textualism

**First**, textualism is not a paradigm for evaluating the constitution. There are multiple conflicting textual interpretations of the constitution. The whole point of an interpretive paradigm is that is supposed to clarify what the ambiguous text means.

**Second**, OPM is based in the original political/historical meaning of the “terms” of the constitution. Many of these terms and concepts are historically outdated and we don’t have the proper perspective to interpret them. Only through OPM, can we understand what these terms actually mean.

## AT Amend Constitution

**First**, this just means permissibility because it means that it is not proactively constitutional or unconstitutional so you affirm.

**Second**, if I win the framework it says that we determine that what we morally ought to do based on what the constitution descriptively says. That means the justification for amending the constitution for moral reasons would have to be based in what the constitution currently says. No amendment would be morally justified unless it is consistent with the current state of the constitution.

**Third**, fiating a new amendment requires fiating a change in mindset of current policymakers. This skews neg ground because mindsets are unverifiable and irresolvable. There is minimal topic lit on policymaking mindsets because we can’t exactly delve into the minds of policymakers because they are not externally knowable. Ground is key since it dictates our ability to formulate arguments.

# Extra

## Function FW

The United States’ function is to remain consistent with the Constitution since it’s the social agreement that guides American democracy. **Kahn**:[[10]](#footnote-10)

In the American constitutional frame, popular sovereignty and the rule of law are a single phenomenon constitutive of the national political identity. The rule of law, which begins and ends in American life with the Constitution, is the self-expression of the popular sovereign. The Constitution is the source of all law-making power, and every assertion of a legal rule can be tested against the Constitution.

Madison[[11]](#footnote-11) concurs:

**This Constitution,** and the Laws of the United States which shall bemade in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, **shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution** or laws of any state to the contrary notwithstanding.

So, the standard is consistency with the descriptive state of the United States Constitution.

Prefer it,

1. The answer to an “ought” statement inside a set of institutional rules requires mere reference to the rules themselves—its “practice rules”—which specify notions of right and wrong prior to the evaluation of more general rules. **Schapiro**:[[12]](#footnote-12)

In his early article, “Two Concepts of Rules,” Rawls sets out to limit the scope of the utilitarian principle by arguing that it is inapplicable to actions of a certain type.25 His claim is that actions which fall under practice rules, for example actions governed by the rules of games and social institutions, have a structure which is different from the structure of action presupposed by utilitarianism. Such actions are not, therefore, directly subject to utilitarian evaluation. **Whereas a practice as a whole can be judged in terms of its overall consequences**, Rawls claims, a particular move within a practice can only be judged in relation to the practice rules. Rawls’ argument turns on a conceptual point about the relation between the rules of a practice and the cases to which they are applied. Practice rules, he claims, are “logically prior” to particular cases [since].  [“]In a practice there are rules setting up offices, specifying certain forms of action appropriate to various offices, establishing penalties for the breach of rules, and so on. We may think of the rules of a practice as defining offices, moves, and offenses. Now what is meant by saying that the practice is logically prior to particular cases is this: [“]given any rule which specifies a form of action (a move), a particular actionwhich would be taken as fallingunder this rule given that there is the practice would not be described as that sort of action unless there was the practice.[”] Rawls illustrates the logical priority of practice rules over actions with reference to moves [I]n the game of American baseball.27 [For example,] [o]utside the “stage-setting” of the game [of baseball], it is certainly possible to “throw a ball, run, or swing a peculiarly shaped piece of wood.” But it is impossible to “steal [a] base, or strike out, or draw a walk, or make an error, or balk.” 28 Where the rules of baseball are in force, movements come to constitute moves of particular kinds, and conversely in the absence of such rules, actions which might appear to be moves are properly described as mere movements. In this respect, Rawls claims, practice rules differ from another general class of rules called “summary rules.” Summary rules [which] are “rules of thumb.” Their role is to allow` us to approximate the results of applying some more precise but perhaps more unwieldy principle to particular cases [and therefore] . As such, summary rules are arrived at by generalizing the results of the prior procedure. They are “reports” of these results, presented as guides for deliberating about what to do in cases which are relevantly similar to those used to generate the reports. Summary rules are therefore logically posterior to the cases to which they apply. [f]or in order to specify a summary rule, it is necessary to generalize over some range of cases, and the relevant descriptions of these cases must be given in advance if generalization over them is to be possible. Whereas summary rules presuppose the existence of a well-defined context of application, the establishment of a practice imposes a new conceptualand normative structure on the context to which theyare toapply. In this sense, a practice amounts to “the specification of a new form of activity,” along with a new order of status relations in which that activity makes sense.29 From the point of view of a participant, the establishment of a practice transforms an expanse of grass into “playing field,” bags on the ground into “bases,” and individuals into occupants of determinate “positions.” Universal laws come to hold a priori, for example that “three strikes make an out,” and that “every inning has a top and a bottom.” And within that new order people come to have special powers, such as the power to “strike out,” or to “steal a base.”  The salient point for Rawls’ purposes is that there are constitutive constraints on the exercise of these new powers, constraints by which any participant must abide in order to make her movements count as the moves she intends them to be.

Impacts: A. The constitution represents the physical codification of the autonomous decision of individuals to submit themselves to the jurisdiction of the state. Respecting the constitution above all else is the only way to hold the state accountable to the tacit agreement of those individuals to sacrifice some freedoms in exchange for governance under the rules established with the government. B. Since what it means to “jury nullify” is contextual to being within the practice of the CJS, going against the broader practice rules, i.e. the Constitution, undermines what the action of the resolution even means.

2. Ought implies a functional obligation. **Macintyre**:[[13]](#footnote-13)

Yet in fact the alleged unrestrictedly general logical principle on which everything is being made to depend is bogus- and the scholastic tag applies only to Aristotelian syllogisms. There are several types of valid arguments in which some element may appear in a conclusion which is not present in the premises. A.N. Prior’s counter-example to this illustrates its breakdown adequately; **from** the premise **‘He is a sea captain’; the conclusion may be** validly **inferred that ‘He ought to do whatever a sea-captain ought to do’.** This counter-example not only shows that there is no general principle of the type alleged; but **it** itself **shows** what is at least **a grammatical truth—an ‘is’ premise can** on occasion **entail an ‘ought’ conclusion. From** such factual premises as **‘This watch is** grossly **inaccurate** and irregular in time-keeping’ and ‘This watch is too heavy to carry about comfortably’, **the** evaluative **conclusion** validly **follows that ‘This is a bad watch’.** From such factual premises as ‘He gets a better yield for this crop per acre than any farmer in the district’, ‘He has the most effective programme of soil renewal yet known’ and ‘His dairy herd wins all the first prizes at the agricultural shows’, the evaluative conclusion validly follows that ‘He is a good farmer’. Both of these arguments are valid because of the special character of the concepts of a watch and of a farmer. Such concepts are functional concepts; that is to say, **we define** both **‘watch’** and ‘farmer’ **in terms of** purpose of **function** which a watch or a farmer are characteristically expected to serve. It follows that the concept of **a watch cannot be defined independently of the concept of a good watch** nor the concept of a farmer independently of that of a good farmer; and that the criterion of something’s being a watch and the criterion of something’s being a good watch.

Prefer it:

1. Real world education – ought statements for legal fictions or institutions refer to functionality since we create them and thus decide what they do, so my interp key to real world understanding of obligations. Also, legal education comes first because everyone needs to know how the law works in order to live in the U.S. It also outweighs because, debaters become lawyers in huge numbers, 40% of debaters who think about their careers’ plan to be lawyers**[[14]](#footnote-14)**. Even if philosophy is good I outweigh **A.** we always have the same util vs. deont debate on any resolution, my interp lets us actually talk about the topic **B.** framework debates in LD have devolved into blippy assertions alongside triggers that bastardize the literature and prevent real philosophical discussion.

2. Debatability – philosophy is irresolvable since no moral obligations can be objectively grounded **A.** any moral principle requires a justification, and a justification for the justification, and so on, so debates about morality are either inevaluable infinite logical regressions or just unweighable assertions of principles **B.** moral claims establish rules for actions. But, for any rule, we need a rule to know how to interpret the rule, i.e., when I point my finger there’s no non arbitrary way to decide if I am pointing in the direction of wrist to fingertip or from fingertip to wrist. This means rules are infiniteable interpretable, undermining morality. Debatability is key to fairness and outweighs other links because the judge can’t decide fairly if the judge can’t decide at all, also key to being able to clash.

3. Reciprocity- under my interp the burdens are 1-1 and reciprocal, the aff proves the resolution is consistent with legality and the neg proves it’s inconsistent. We don’t have to worry about who gets skep ground or other issues that create strategy skews and detract from education.

And, even if they win that ought does not equal function, traditional ethics fail in the context of groups of agents acting, such as government A. Groups include many different individuals, making it impossible to regard them as a morally accountable agent because that would require holding each individual responsible, even if they did not contribute to the action itself B. They don’t have the ability for internal motivation or self-reflection, which means that traditional ethical theories have no normative force.  Gerson:

Having said this, I still think that the argument that seeks to include nations within the class of moral agents on the basis of intentionality is a weak one. Here is why. There is an ambiguity in the term “intentionality” that this argument exploits. **In the sense in which nations have intentionality, the attribution of moral agency does not follow.** In the sense of intentionality according to which moral agency does follow, this argument does not show that nations have that. **Intentionality** in the first sense **can characterize any goal-directed behavior** and can also be applied to any behavior that is understandable in the light of that goal. For example, it is perfectly reasonable to say that a squirrel is gathering nuts for the purpose of eating throughout the winter, or that the rattle of the snake’s tail shows that it intends to strike, or that the field mouse is trying to get into the house in the  autumn in order to keep warm, or that the chess-playing robot is trying to pin down my knight. **But the sense of intentionality** that applies to such goal-directed behavior by agents obviously does not indicate *moral* agency. Intentionality in the second sense, the sense **according to which its applicability *does* imply moral agency,** is something else. In this sense, intentionality **refers** first and foremost **to the self-awareness of** the presence of **the purpose** and the self-awareness **of the mental states leading to its realization. That is,** of course, **precisely why we refrain from claiming that someone is responsible for her actions when she is *unaware* of what she is doing.”**

Only a functional notion of ought solves because you do not need unified intentional agency in order to have a function, for example a spoon’s function is feeding though it’s not conscious.

## OPM

I advocate the status quo to be consistent with the constitutional interpretative mechanism of ***original public meaning***, or OPM. OPM looks at the historical attitudes and legal climate at the time to see how people at the time would have interpreted constitutional provisions. **Zalta**:[[15]](#footnote-15)

Another way in which originalists split is over the identity of the original object of interpretation. One originalist might focus on the retrieval of original understandings, while another might wish interpreters to zero in on the original intentions of the relevant constitutional authors. But one must be careful here. **Original public understanding** is likely to **matter[s]** to this second originalist **because** the primary means of conveying one's intentions in the context of legal enactment are the words chosen to express one's intentions. And those **words cannot convey** one's **intentions unless** some standard meaning or **common understanding is assumed**, a standard public meaning to which both authors and readers have access and in terms of which the latter can, and are expected to, grasp the former's intentions. But **that meaning** or understanding **can**no**t be anything other than the original** one **because authors do not have** crystal balls and therefore have no access to **future understandings.** So original intention theorists will have interpreters pay considerable attention to original public understanding. Corresponding things will be true of an originalist whose principal focus is original understanding: she need not dismiss entirely the relevance of original intentions, at least in some cases. Should it turn out, for instance, that original public understanding leads to unforeseen applications or results that we have good historical evidence to believe the authors did not intend, or would have flatly rejected had they known what we now know, an originalist might allow such actual or hypothetical intentions to override original understanding. Among the ways in which one might be able to determine that constitutional authors did not intend, or would not have wished to endorse, a particular concrete application or result suggested by the original understanding of a constitutional provision is by appeal to the general goals or purposes we have reason to believe they intended to achieve in enacting what they did. Sometimes these goals and purposes, often called further intentions, are explicitly expressed in the preamble to a constitution, as is often true in the case of ordinary statutes. But such statements of purpose in constitutions tend to be very broad and highly abstract and are therefore of very limited use in dealing with the more specific questions that arise under particular constitutional provisions.[[20](http://plato.stanford.edu/entries/constitutionalism/notes.html%22%20%5Cl%20%2220)] So appeal is sometimes made to official (and nonofficial) debates and discussions surrounding the drafting, adoption or ratification of the constitution or of the particular provision in question. Sometimes **appeal** **is** even **made to** widely shared **beliefs at the time on the relevant issue.** It's quite likely that hanging, for example, was widely held in eighteenth-century America to be a quick and relatively humane form of execution. Thus one might have very good historical reason to believe that it could not have been among the intentions of the Eighth Amendment's drafters to ban such a practice. An originalist interpretation of that Amendment might draw support from this fact in an argument purporting to demonstrate the constitutional validity of hanging.

And, if the neg reads turns, they must either explicitly concede OPM or specify and read carded evidence in favor of an alternative interpretive mechanism for the constitution. Explicit clarity and specification about the weighing mechanism is necessary because otherwise offense becomes entirely irresolvable since there’s no way to prioritize different impacts to text, framer’s intent, etc. so I also control the internal link to all ground and clash claims. They must also read carded evidence for that interpretative mechanism to ensure it’s in the literature otherwise it’s neither real world nor predictable since there are an infinite number of potential interpretations.

I contend OPM negates. Constitutional dictates manifest through the post-Blackstonian legal climate, based on the writings of British legal scholar William Blackstone, which forms the OPM, **Alford**:[[16]](#footnote-16)

Starting with Federalist Number 78,114 we can see that Alexander **Hamilton uses the concept of fundamental law when describing the** binding power of a **constitution.** He notes that any constitution is a “fundamental law,” and as such, where “there should happen to be an irreconcilable variance between [the Constitution and a statute] . . . the Constitution ought to be preferred to the statute . . . . They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.”115 T**his label** of fundamental law **is taken directly from Blackstone.** He asserts in the *Commentaries* that all persons have absolute rights, and it is society’s principle duty to protect these rights.116 Society does so by assigning constitutional significance to certain acts that recognize these rights—the acts do not create the rights, because they are at core natural rights. Blackstone lists these acts that set out the “fundamental laws of England”: the Great Charter of Liberties (i.e., the Magna Carta as altered and reconfirmed, mentioning by name the Confirmation of Charters), the Petition of Right, the Habeas Corpus Act, the English Bill of Rights, and the Act of Settlement.117 Accordingly, the very idea of American **constitutional rights**, as we understand them, is **derive**d **from the** constitutionalist **tradition** manifested **through Blackstone. Without the notion** of fundamental law, **there could be no principle** of judicial review of statutes, or indeed **of rights** that could never be abridged by statute.

He continues:[[17]](#footnote-17)

The first source this Article will consider is William **Blackstone’s *Commentaries*** *on the Laws of England.* a writing that had an unparalleled influence on the American lawyers who drafted the Constitution.92 It served as a conduit through which English jurisprudential developments **influenced the Framers and** thus affected the development of the **Constitution.**93 Consequently Blackstone’s *Commentaries***[it]** had such a profound influence on the Framers’ generation that it **“was often used** by practitioners **‘as a shortcut to the law.’”** The *Commentaries* were an “immediate success,” particularly in America.95 “When Blackstone’s *Commentaries* were published . . . Americans were among his most avid customers.”96 “American subscribers ordered 1,557 sets—an astounding response [in addition to over a thousand copies ordered individually in addition to those subscriptions placed through printers] . . . . **Blackstone’s text became ubiquitous on the American legal scene.**

1. http://vbriefly.com/side-bias/ [↑](#footnote-ref-1)
2. my computer :D (oxford dictionary) [↑](#footnote-ref-2)
3. Langseth, Jonathan. "Wittgenstein’s Account of Rule-Following and Its Implications." Stance 1.April (2008): 38-43. Bsu.edu. Web. 6 Oct. 2014.  <http://www.bsu.edu/libraries/virtualpress/stance/2008\_spring/ 12Wittgenstein.pdf>. [↑](#footnote-ref-3)
4. JUSTIFICATION AND EXCUSE: WHAT THEY WERE, WHAT THEY ARE, AND WHAT THEY OUGHT TO BE, 2004 [↑](#footnote-ref-4)
5. Pure Theory of Law, Hans Kelsen, 1934 [↑](#footnote-ref-5)
6. The Free Dictionary by Farlex. “Colleges and Universities legal definition of Colleges and Universities.” The Free Dictionary, Farlex [↑](#footnote-ref-6)
7. Searle, John R. "How to Derive "Ought" from "Is"". <http://commonsenseatheism.com/wp-content/uploads/2010/03/Searle-How-to-Derive-Ought-from-Is.pdf>. [↑](#footnote-ref-7)
8. Kahn, Paul. Why The United States Is So Opposed. December 2003. Crimes of War Project. http://www.crimesofwar.org/icc\_magazine/icc-kahn.html [↑](#footnote-ref-8)
9. “Gifted Tongues: High School Debate and Adolescent Culture” (2001)Gary Alan Fine.

“Of those who had selected a career, a plurality (40 percent), planned to become lawyers.”

Survey of over 400 students from 300 schools – 150 with people going to NFLs and 150 random not going to NFLs [↑](#footnote-ref-9)
10. Kahn, Paul. Why The United States Is So Opposed. December 2003. Crimes of War Project. http://www.crimesofwar.org/icc\_magazine/icc-kahn.html [↑](#footnote-ref-10)
11. The constitution [↑](#footnote-ref-11)
12. Schapiro, Tamar (Stanford University). Three Conceptions of Action in Moral Theory, Noûs 35 (1):93–117, 2001. [↑](#footnote-ref-12)
13. Alasdair C. MacIntyre. “After Virture.” University of Notre Dame Press; 3rd edition [↑](#footnote-ref-13)
14. “Gifted Tongues: High School Debate and Adolescent Culture” (2001)Gary Alan Fine.

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Survey of over 400 students from 300 schools – 150 with people going to NFLs and 150 random not going to NFLs [↑](#footnote-ref-14)
15. Waluchow, Wil, "Constitutionalism", The Stanford Encyclopedia of Philosophy (Winter 2012 Edition), Edward N. Zalta (ed.), forthcoming URL = <http://plato.stanford.edu/archives/win2012/entries/constitutionalism/>. [↑](#footnote-ref-15)
16. THE RULE OF LAW AT THE CROSSROADS: CONSEQUENCES OF TARGETED KILLING OF CITIZENS Ryan Patrick Alford\* Ryan Patrick Alford, Assistant Professor, Ave Maria School of Law. [↑](#footnote-ref-16)
17. THE RULE OF LAW AT THE CROSSROADS: CONSEQUENCES OF TARGETED KILLING OF CITIZENS Ryan Patrick Alford\* Ryan Patrick Alford, Assistant Professor, Ave Maria School of Law.

 [↑](#footnote-ref-17)