

THE LEGAL SYSTEM AS A SOURCE OF VALUES

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Values play a central role in the study of the law. Legal decisions often highlight the value conflicts that are present in society. In the past few decades, the Supreme Court has addressed such value-laden issues as abortion, religion, criminal and civil rights, and discrimination. The legal system often reflects the values of society. Political commentator William Buckley observed, "I am not certain that I could walk from here to the street corner without observing some law that reflects somebody's values."¹

With the increased use of value topics in academic debate, it is not surprising that many teams rely heavily on the decisions of the courts in defending the desirability of certain values. Given the value-laden nature of many decisions, court cases are fertile grounds for locating information about contemporary values. In addition, there are many reasons to believe that the rhetoric of values found in court decisions is a sound basis for societal values.

Initially, legal reasoning and legal decisions are viewed by many people as being very rational in nature. A court decision is often viewed as more rational than a similar decision by the President or Congress. George C. Christie notes that "Ever since law became a specialized discipline, it has been assumed that legal reasoning exhibits a greater rigor than other types of non-formal argumentation."² Legal decisions are often viewed as being rational; the myth of the objective justice is believed by many debaters and judges.

In addition, many individuals believe that the courts, and especially the Supreme Court, have certain characteristics that make them an appropriate guardian of American values. The judges are (at least theoretically) appointed because of their expertise in law, and the justices are often viewed as detached, neutral observers of the political process. Miller even suggests that the Supreme Court is the only institution that can isolate and express our national values.³

Despite the appeal of relying on the rhetoric of legal opinions to support our views of values, there are serious problems involved in using legal opinions to establish values and/or value hierarchies. This paper will outline some of those limitations.

Problems with Relying on Legal Opinions

While legal opinions may reflect the views of a specific set of justices on a value issue, they may not reflect the ideal view of these values. There are several reasons for this.

First, the decision of any judge reflects that individual judge's values, not a set of universal values. While there is a tendency on the part of many debaters to suggest that the justices on the Court are super-human individuals with an "objective" view towards values, this view is not held by many legal scholars. Decisions often reflect the judges' values, not the values of society as a whole or those values that should be viewed as desirable. Legal realists from the time of Jerome Frank⁴ forward have suggested that judges have much discretion in deciding cases, and that they use this discretion to promote the values that they feel to be desirable. This discretion is inevitable. In his 1959 Oliver Wendell Holmes Lecture at Harvard Law School, Herbert Wechsler advocated that judges use "neutral principles" in deciding cases.⁵ This plea was met with a great deal of criticism; the thrust of which was that the Supreme Court cannot be neutral.⁶ Vevel suggests:

...it must be recognized that the articulation of value premises will not necessarily make them fully amenable to the processes of reason. In the final analysis, most or even all values are based on faith as much as reason.⁷

These values often reflect the personal views of the individual justices. American legal philosopher Morris Cohen noted that "the process of judicial legislation is...determined consciously or unconsciously by the judge's view of fair play, public policy, and the general nature of things." He continues:

Constitutional law is politics, and not very clean politics at that — for it deals in dishonest intellectual coinage hiding factual issues under false covers.⁸

Many court cases today are decided in a manner inconsistent with decisions made by the Warren Court, not because reality has changed in the past two decades, but rather because the current justices reflect different political philosophies than those on the Court during the 1960's. This is the reason why there is so much controversy over the appointments to the Supreme Court that will be made during the next four years.⁹ Graglia, in an article generally critical of any Court cases that interpret the Constitution, concludes:

The great Judge Learned Hand protested that he would find it 'most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not.' I consider it not merely irksome but shameful to be ruled, not even by Platonic Guardians authorized and supposedly competent to rule, but by a handful of lawyers, elected by no one, holding office for life, and pretending to interpret the Constitution.¹⁰

The decisions of the Court represent individual views about the nature of values in our society, not necessarily what those values should be.

Even if the justices of the court were omnipotent individuals, their decisions should be used with caution for another reason: the justices are limited in their ability to "make" law. Theoretically, judges interpret laws,

they do not make laws. Thus, if a Court decides that the freedom of speech is the most important right, it is merely indicating the value hierarchy expressed by the framers of the Constitution; this hierarchy may not be the one the justices think should exist. In Baker v. Carr,¹¹ Justice Harlan, in his dissenting opinion notes:

The Federal Courts have not been empowered by the Equal Protection Clause to judge whether this resolution of the State's internal, political conflict is desirable or undesirable, wise or unwise.¹²

The Court does not act as a super-legislature, determining if all laws are wise; the sole purpose of the Court in these cases is to determine if the law is consistent with the Constitution, not to reflect upon the wisdom of either the law or the Constitution. Justice Frankfurter observed:

There is for me, as I know also for you, a great makeweight for dealing with this problem, namely that we are not the primary resolvers of the clash. We are not exercising an independent judgement; we are sitting in judgement upon the judgement of a legislature.... What weighs with me strongly is...that we do not exercise our judicial power unduly, and as though we ourselves were legislators by holding too tight a rein on the organs of popular government.¹³

Debaters, on the other hand, are expected to go beyond this in order to speculate on the desirability of the values behind our laws and behind the Constitution. Just as debaters are encouraged to question the reasoning of the members of Congress when debating policy propositions, so should debaters question the reasoning of Supreme Court justices in debating value resolutions.

Even if the Courts consisted of rational individuals with a knowledge of the "truth" about values, there is another reason to be cautious about using legal decision in debating values: the decisions are often poorly worded.

Henry M. Hart observed:

...few of the Court's opinions, far too few, genuinely illuminate the area of law with which they deal. Other opinions fail even by much more elementary standards. Issues are ducked which in good lawyering and good conscience ought not to be ducked. Technical mistakes are made which ought not to be made in decisions of the Supreme Court of the United States.¹⁴

Nor have conditions changed in recent years. Duke University professor of law William Van Alstyne notes "Many cases are just a muddle. The legal tests being developed now are as complicated and picayune as the Internal Revenue Code."¹⁵ Part of the reason for the low quality of many of the Court's decisions is the heavy caseload of the Court. Several justices in recent months have argued that the Court is overworked and has trouble reaching well-reasoned decisions. In addition, the Court is often expected to reach a decision without understanding the full implications of the decision. Early decisions on abortion, civil rights, contract law, and so on were often based on a few cases; the

implications of these decisions for future cases were often unclear at the time:

Any lawyer who has worked through a line of cases about easements or trusts or bills and notes or any other legal subject knows that no court has ever achieved perfection on its first, or indeed in its twentieth opinion on the same subject.¹⁶

Using Legal Decisions in Value Debate

While legal decisions can be misused by debaters in value debate, this does not mean that there is no role for legal decisions in debate. Decisions can suggest ideas to debaters, and the phrasing of some opinions can help provide rhetorical support for debaters' arguments. What is more important is that debaters attempt to understand the reasons behind decisions. Decisions have importance only in a broader context. To lift phrases out of a decision is to distort the true meaning of the decision:

...the logic, spirit, history, integrated structure, and most especially the purpose of the Constitution are at least as important to its meaning as its mere words and phrases rudely torn from their organic context.¹⁷

To understand the decision in a case, it is important for debaters to understand the history of the issues behind the case and how the case fits in with earlier cases. This information will permit the debater to assess the strength of the reasoning by the Court. Justice Holmes noted

...the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words from a dictionary, but by considering their origin and the line of their growth.¹⁸

To understand a legal decision, the debaters must understand the reasons behind the case. Lifted from context, legal opinions may be misleading:

...some misimpressions are created by the reader or critic who takes a sentence or paragraph from an opinion, sometimes out of context, and analyzes it as a Shakespeare scholar would, or as though it were a verse from Holy Writ, discovering hidden meanings, innuendoes, and subtleties never intended.¹⁹

To generalize from an opinion that applies to a narrow case to a broader range of values should be done only with caution, and with a firm understanding of the reasoning behind the court's decision. Even when the debater understands the reasoning of the Court, the wisdom of that reasoning should still be explored:

Precedent cannot be understood as serving as logical axioms that, when mechanically applied, formulate a 'correct' conclusion; rather, precedent is an accumulation of wisdom against which the validity of new conclusions can be assessed. Thus a consideration of precedent does not terminate the decisional process, it merely supplies reference materials. Many provocative questions remain: was the past wisdom really ever wise; was it wise when made, but changed conditions have altered its wisdom; even if past wisdom is still wise, is the present problem different enough to elude the contours of the past decisions?²⁰

Legal Definitions

One example of the misuse of legal reasoning in debate is the increased use of legal definitions in debate. While it is desirable that debaters learn how to use Words and Phrases, Corpus Juris Secundum, Black's Law Dictionary, and Ballentine's Law Dictionary, many debaters misuse the information found in these references. There are numerous limitations to lifting definitions from legal sources and applying them to a debate. Both Black's Law Dictionary and Ballentine's Law Dictionary warn against blind acceptance of dictionaries and on applying definitions from one context to another. In law, definitions are extremely important, but the application of those definitions from the legal setting to the debate setting can result in distortion.

That it is desirable to define terms in context has become commonplace; most debaters and judges accept that it is important that advocates define terms in a broader context. In the area of law, however, the implications of this guideline are ignored. Many legal definitions are designed to define terms in a very narrow context. Consider the following definition of "employment":

Service in the active military is not to be construed as 'employment' under the Workman's Compensation Law.²¹

This definition is intended to outline the limits of a term within the meaning of a specific statute; in drafting the law, Congress probably did not want to apply the law to the Department of Defense; the easiest way to do that was to define "employment" for the purposes of the act as excluding military service.

This does not mean that this is the best definition, or even a reasonable definition, outside the context of that specific law. To apply this definition to a context outside of the Workman's Compensation Law is to ignore the context of the definition.

Similar problems occur with any legal definitions. These definitions apply to a specific court case, interpreting a specific law. This definition may not be reasonable in any other context. As a result, legal definitions may contradict each other, both because they assume conflicting contexts, and because many legal dictionaries (especially Words and Phrases) may contain definitions from cases that have been overturned.

The solution to this problem is to avoid over-relying on legal dictionaries. The debaters should understand the reasoning behind the definitions; they should not just read conclusionary definitions. Forcing debaters to analyze the process of defining terms will permit them to decide which of several conflicting legal definitions should be used by the critic.

Conclusion

Debaters will continue to draw heavily from legal materials in defining terms and in locating values. It is important, however, that they understand the complexity of these issues. Legal theorists and judges are fallible, just like any human beings. It is important to attempt to critically evaluate the decisions of the courts and to understand the reasons advanced by the courts in reaching their decisions. This process will help us understand the nature of values in law, as well as how to apply those values to our understanding of reality.

NOTES

¹"Imposing Whose Beliefs on Whom?" (Nashville) Tennessean, September 17, 1984, p. 7-A.

²George C. Christie, Jurisprudence: Text and Readings on the Philosophy of Law (St Paul, MN: West Publishing Co., 1973), p. 833.

³Arthur Selwyn Miller, Toward Increased Judicial Activism: The Political Role of the Supreme Court (New York: Greenwood Press, 1984).

⁴Courts on Trial (Princeton: Princeton University Press, 1949). See also Dale Hample, "Motives in Law: An Adaptation of Legal Realism," Journal of the American Forensic Association, 15 (1979), 156.

⁵"Toward Neutral Principles of Constitutional Law," Harvard Law Review, 73 (1959), 1-35.

⁶See, for example, Benjamin F. Wright, "The Supreme Court Cannot be Neutral," Texas Law Review, 40 (1962), 599, and Charles E. Clark, "The Limits of Judicial Objectivity," American University Law Review, 12 (1963), 6.

⁷Lawrence R. Vevel, "Suggested Approaches to Constitutional Adjudication and Apportionment," U.C.L.A. Law Review, 11 (1965), p. 1283.

⁸Quoted in Harry N. Rosenfield, "Morris R. Cohen: A Philosopher's Influence on the Law," Catholic Lawyer, 26 (Winter, 1980), p. 57.

⁹See "Old-Fashioned Courtship," New Republic, October 22, 1984, p. 6; and "Court at the Crossroads," Time, October 8, 1984, pp. 28-35.

¹⁰Lino A. Graglia, "Was the Constitution a Good Idea?" National Review, July 13, 1984, p. 39.

¹¹369 U.S. 186 (1962).

¹²In William B. Lockhart, Yale Kamisar, and Jesse H. Choper, eds. The American Constitution: Cases and Materials 3rd Ed. (St Paul, MN: West Publishing Co., 1970), p. 84.

¹³In Howard Ball, Court and Politics: The Federal Judicial System (Englewood Cliffs: Prentice-Hall, 1980), p. 13.

¹⁴"Forward: The Time Chart of the Justices: The Supreme Court, 1958 Term," Harvard Law Review, 73 (1959), p. 100.

¹⁵"Court at the Crossroads," p. 30.

¹⁶Eugene V. Rostow, "American Legal Realism and the Sense of the Profession," Rocky Mountain Law Review 34 (1962), 141.

¹⁷Edwin Vieira, Jr., "Exclusive Representation Versus Freedom of Petition for Nonunion Public Employees — A Study in Irreconcilable Constitutional Conflict," Detroit College of Law Review, 3 (1977), p. 504.

¹⁸Gompers v. United States, 233 U.S. 604, 610.

¹⁹Robert A. Leflar, "Some Observations Concerning Judicial Opinions," Columbia Law Review, 61 (1961), 817.

²⁰Stanley Ingber, "The Interface of Myth and Practice in Law," Vanderbilt Law Review, 34 (March, 1981), p. 316.

²¹Goldstein v. State, 9 NYS 2d 799, 800, in Words and Phrases, v. 14A, 1952, p. 123.