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# The Criteria Handbook



What is Justice? How do I know if I am being just? What makes an action moral? How do I evaluate a value? Why should I worry about criteria? How do I argue criteria? What's the difference between a value and criteria?

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## HOW TO USE VALUES AND CRITERIA IN DEBATE

by Anthony Berryhill

### The Basic Background Information

A **value** is defined by Webster's Dictionary as "A principle, standard, or quality considered worthwhile or desirable."

So then, what is value debate? Following this definition, a value debate is a debate between **conflicting** principles, standards and qualities considered as desirable.

This usually takes the form of a resolution that poses a conflict between two different values where we have to determine which is most important. For example, in the resolution "The sanctity of life is more important than the quality of life." The values are "sanctity of life" and "quality of life." So, debaters then decide which of these principles is more important.

However, this makes the process of value debating seem unusually simplistic, because it begs the question, "How do you decide the conflict between two different principles?"

Answer: you decide upon standards to weigh the two values.

First, you need to identify what you are trying to evaluate, or what is sometimes called the **evaluative term**. In the sanctity of life example, the evaluative term is "is more important." Therefore, the value debater would propose standards that relate to importance, that define what makes a value important and how you measure importance.

Other examples:

**"A just social order ought to value the principle of equality above that of liberty."**

evaluative term: ought to value and above. This means that in this topic, you are defining and determining standards that can be used to weigh equality and liberty.

**"The possession of nuclear weapons is immoral."**

evaluative term: immoral. So, your standards define and measure degrees of morality or immorality.

**"Capital punishment is justified."**

evaluative term: justified. So now the standards determine levels of justifiability, in this case, in terms of what makes punishments justified.

**"A separation of judicial, executive and legislative powers best insures principles of democracy."**

evaluative term: best insures principles of democracy. So your standards would define and measure how to best provide for democratic principles.

**"Violent revolution is a just response to oppression."**

evaluative term: just response. The standards then define and measure when you have a just response.

Note that these resolutions differ in their type and each uses different types of evaluative terms. For now, focus on understanding how to identify evaluative terms. We will discuss resolution types later.

So how do you handle evaluative terms? What do we use to determine degrees of importance, morality or justifiability.

There are two things:

First, you use a value premise. Webster's defines a **premise** as "A proposition upon which an argument is based or from which a conclusion is drawn." So a value premise is a value that answer questions, "What determines morality" or "What determines what is justified?"

Value premises are usually very broad and encompassing. Morality and justice are the two biggest values.

Morality is commonly defined as "conforming to standards of right and wrong." This means that to be moral, you have to uphold specific principles of ethical conduct.

Justice is either defined as "giving each person his/her due" or "balancing between competing claims." "Giving each person his/her due" usually entails rights protection for all people, a claim that if you deny one individual what he/she deserves, that still doesn't create justice. "Balancing between competing claims" defines the conflict that one has to take two values (like sanctity and quality of life) and use some standard to balance one value above the other. The value that has more weight is the more just one to prioritize.

Note though, that these are not the only possible value premises and later you'll see that you can adopt many standards as possible premises as well. The key thing to note now is that value premises **identify** the most key principle that should underlie all of the argumentation in the round. For example, a value premise of morality means that all of the arguments have the assumption that morality is a fundamental value to uphold.

So let's go back to the previous resolutions to see how the logic would work, adding in value premises.

**"The possession of nuclear weapons is immoral."**

Because possession nuclear weapons violates standards of right and wrong, it violates morality.

**"A just social order ought to value the principle of equality above that of liberty."**

Because justice is the highest value, and because equality best fulfills standards of justice, equality is more important.

**"Capital punishment is justified."**

A punishment is justified if it fulfills standards of the value premise of justice. Capital punishment fulfills standards of the highest value, justice, and therefore is justified.

Now you may be wondering how do you figure out what those standards are, and what are they?

That is where criteria come in. Webster's defines a **criterion** as "A standard, rule, or test on which a judgment or decision can be based." So what is a value criterion? It is a standard that defines how we make judgments about the value premise. In other words, it tells us when we have met the value premise.

Whereas value premises are broad and all encompassing (like justice), criteria are specific and measurable. Whereas value premises are the underlying assumptions behind all of the argumentation, criteria are the links/impacts that tell you when you have met the requirements for proving a "just" or "moral" action.

There are infinite numbers of value criteria that can be used. Some people choose to use value criteria that are specific philosophies such as “the social contract” and “the original position.” Others use more general standards like “protecting individual rights” and “maximizing individual welfare.” You can use specific ones too like “protecting innocent life” or “proportionality.” In the next section, we will list the different possible criteria and how they are often used.

For now, recognize these three very crucial requirements for a good value criterion:

1. Fairness

The value criterion must be a standard that can weigh the arguments for both sides, otherwise it loses its value. For example, adopting a value criterion of equality doesn't ever give the judge or you a standard to determine if equality is the most important principle. Choose value criteria that can be used as something the judge can use to decide which debater wins.

For example, on the topic “The possession of nuclear weapons is immoral.” A criterion of morality would NOT work, because that is begging the question. Would a value of morality work? We'll get to that later.

On the topic of “Morality is more important than law.” A criterion of adherence to the law would not work because that does not determine why law is more important, it merely asserts that it is. Your criteria need to be the answers as to why your resolutional value is more important, it must not merely assert that a resolutional value is the highest goal.

2. Contextual Relevance

The criterion you choose must be something that in the context of the resolution's specific conflict, is a standard that provides a unique way to giving a solution. For example, in a resolution about capital punishment, the criterion should be something that evaluates the nature of a punishment such as social welfare, protection of life, etc. Note though, that criteria can be applied to multiple topics. (like individual welfare can apply to a topic about punishment or to a topic about law) The bottom line is that your criterion must be something that can work for the resolutional conflict you are talking about.

3. Definability

The criterion you choose must be something that can be defined clearly. For example, a criterion of individual welfare is definable because you can say that individual welfare is doing things that best uphold individual needs. In other words, your criterion must have a very clear **definition** of what the criterion is.

So let's identify the logic so far:

- I. The **Resolution** provides a conflict between two different values (The sanctity of life is more important than the quality of life) or the evaluation of some statement of truth (i.e. Possessing nuclear weapons is immoral)
- II. We **identify the evaluative terms** that show what burden we must meet in the resolution. (i.e. determining standards of importance or morality)
- III. We then use a **value premise** to identify the most important element of the evaluative term. (i.e. Justice is what determines what is a justified punishment or Morality defines whether equality or morality is more valuable).
- IV. **Value criteria** identify, define and measure the standards that you need to meet in order to achieve the value premise. (i.e. a justified punishment is one that achieves the value criteria of protecting innocent life and giving proportional punishment)

What that series of logic in mind, let's look at specific value premises/criteria:

### Sample values/criteria

What are common criteria for a value premise of morality? Well, the criteria must be focused upon providing specific standards of right and wrong. The criteria for morality must be things that you can identify as specific principles that you use to determine moral conduct.

For example, if I had the topic, "The use of economic sanctions to achieve US foreign policy goals is moral."

With a value premise of morality, the following criteria can apply:

reduction of human suffering—we should do that which minimizes the pain and suffering of other people because of their worth as human beings and because we value the well-being of all people

protection of individual rights—we ought to do that which allows each person to achieve what they deserve from their governments, the protection rights like life, liberty and property. The standards used to deal with this criteria are infinite: you can talk about consent, the social contract, anything and everything related to government or individual rights, and when we should limit or protect rights.

social contract—this means that we ought to do that which is consistent with our contractual obligations to do something. People join governments for the purpose of having the government protect their interests, and consequently give up unlimited freedom for this protection. Therefore, we ought to do that which maintains both sides of this burden.

individual welfare—we ought to do that which minimizes harm to a person and/or maximizes the benefits that someone would get. This criterion relates to anything about psychological, social or political harm, or benefits.

moral agency—we ought to do that which represents us as moral agents, that which allows us to represent our views to other people and that allows us to fight for our moral beliefs. Failing to be a moral agent makes our moral ideals meaningless.

humanitarianism—we have obligations to all human beings to do that which benefits humanity as a whole by securing global welfare, or by taking actions that protects all people’s dignity, welfare and rights

human dignity---because all people are individuals with inherent worth stemming from their humanity, we ought to treat all people with equal respect and concern. This means that we should not do actions which demean people’s worth, or that

autonomy—we ought to do that which is within our justifiable freedom to do. Therefore, we should not have our freedom or autonomy limited when we have the right to make a choice to do something.

maximization of welfare—we ought to do that which allows people, not merely to exist, but to thrive. To maximize welfare means to take steps which allows individuals to achieve their full potential, to get the most of what they can from a situation.

individualism—we ought to do that which allows individuals to express themselves as unique people. Individualism maintains that the uniqueness in each person is valuable and ought to be encouraged.

proportionality—we ought to do that which is consistent to previous notions. For example, you can say that capital punishment is justified because it is proportional to the original crime of murder.

This list is far from exhaustive, and there are many different forms that each criterion can take. You can make a specific standard more specific, or more general. You can claim any of these standards as ones that relate to society (i.e. social welfare). Note that many of these criteria can apply to justice as well and that there is no set list of criteria and value premises that you must use, it is something that you can adjust to your specific case. So now let’s talk about when you know that a particular combination of value premise and criteria will work:

### **How to determine value premise/criterion combinations**

A good value premise/criterion combination is one that maintains the order of logic without major leaps:

resolutional value -> evaluative term -> value premise -> value criteria -> definition of criteria -> case

There’s a lot of logical links to fill, and a good value position gives you the starting point for creating a case. So first, let’s talk about when you know you have a good value position.

#### 1. Everything is definable.

If your value premise and criteria have specific, unambiguous definitions, that goes a long way. Many, many, many debaters write cases where they spend 100-120 words using fluffy language that is often circular or unhelpful in determining what the values mean.

For example,

“Justice is the ultimate value defined as giving each person his or her due. The criterion for justice is protecting individual rights because it is only when we best protect individual rights do we achieve justice. Because justice and individual rights are important standards, those are my value premise and criteria.”

What's wrong with this? Well, first it wastes a lot of words. The second half of the second sentence, "because it is only when we best protect individual rights do we achieve justice" and the third sentence say nothing about what either justice or individual rights mean. They merely assert the importance of the value. Yet many debaters write such rhetoric thinking that they are making everything clear.

When writing your value position remember this structure:

1. say what your value premise is and define the value premise (1 sentence)
2. say what your criterion is and define the criterion (1 sentence)
3. say why the criterion is important (1-2 sentences)
4. say nothing else and move on

An example of good value analysis for the resolution of "An adolescent's right to privacy ought to be valued above a parent's conflicting right to know."

Because the resolution is a question of a rights conflict, the value premise is justice, defined as giving each person his/her due. We give parents and children their due by securing the goals of each group: the welfare of children. Therefore, the most just action achieves the criterion of juvenile welfare.

This of course is not undermining the importance of value analysis, but it is to point out that you make life a lot easier if you can actually look back at your criterion and say quickly what it means.

Here are some clear examples to avoid:

cost/benefit analysis---I know that a lot of debaters use this and intuitively it is appealing.

Weigh the costs and the benefits and the side that does wins. Great. Problem: how do you weigh the costs and benefits? This may be an ideal value premise...but not a criterion. You need to go one step further....the criterion needs to say what you use to weigh costs and benefits.

justice---some debaters use this as a criterion. Clearly, this should be a value premise because who knows how to measure things with justice directly? If I say I achieve justice, and you say that you do too, how do we know who wins? You need something more specific that narrows the focus.

## 2. Everything is fair.

I brought up fairness earlier, and it's worth repeating. Your value premise and criterion ARE NOT things that should be the only things you win in the round. In fact, the ideal debate will be one where two debaters can conflict about what the value standards should be and then spend most of the time impacting back to those standards.

However, that ideal debate never happens if someone chooses a value position that is clearly biased toward one side, a position that there's no way the other side can debate, much less claim that value premise/criterion.

Here are some examples:

situational ethics--- This is a very common criterion in some leagues and it is used by negative debaters to define affirmatives out of the round. The claim is that if you do not know that an action is always true, you cannot make a broad general claim that it is true. Hence, the affirmative cannot always prove the resolution true, and therefore loses. Instead we should adopt a case by case basis to making moral judgments.



Problems: there are many.

First, how do we determine things on a case by case basis? This requires another standard, another criterion—situational ethics is still too vague to use as a weighing mechanism.

Second, it destroys ground, why is it only the affirmative’s burden to prove things on a case by case basis? Why doesn’t the negative have to disprove the resolution on a case-by-case basis as well?

These questions get you started on how to evaluate this specific standard.

All other examples follow under the heading “criteria that reassert the importance of a resolutorial value.”

For example, on a topic of “Global concerns are more important than national concerns.”

A value premise or criterion of global justice is bad because it does not define importance, it asserts that one resolutorial value is good without giving a standard to determine why.

Or on the topic “The sanctity of life is more important than the quality of life.” A value premise/ criterion of sanctity of life is bad too, for the same reason.

So now, can you have a value premise of morality or justice if the resolution has “moral” or “just” as evaluative terms. Absolutely, even though many people differ on the issue.

Sometimes it is much more direct and simple to adopt as a value premise the evaluative term in the resolution, but to have a more specific value criterion.

For example: “The possession of nuclear weapons is immoral.” VP – morality VC –deterrence  
or “Violent revolution is a just response to oppression.” VP – justice VC-protection of rights

### **Multiple criteria? Also, how to apply criteria to developing a case.**

Can you use multiple criteria in a case. I think so, although with a few caveats.

First, whatever you identify as a value criterion, you must win. That means if you provide 2 criteria, you have to win them both.

Many debate rounds have been lost when debaters have 2 or 3 criteria and they fail to meet just one of them. So I wouldn’t run 2 different criteria unless you are absolutely sure you can win both.

How would you use multiple criteria? I think the most direct way is to use the following structure: (i.e. as neg on violent revolution)

VP – morality

VC – protection of life AND humanitarianism

contention 1: violent revolution endangers life

contention 2: violent revolution violates humanitarianism

Each contention would show how your side’s interpretation best meets its respective criterion. And within each contention, you would have arguments that link back to the criterion, saying why each claim violates or upholds the criterion.

Here's an example of another structure:

VP- morality

VC- An action must have good ends, means and intent.

contention 1: violent revolution has good ends...good consequences

contention 2: the methods of violent revolution are justified

contention 3: the intent behind violent revolters is moral.

I think a smarter and far less dangerous method is one you can use for writing most cases, that is to have a more general criterion, but let each contention define "sub-criteria" that relate to the value criterion.

In other words, here is a possible structure

Value premise

General value criterion like "fulfillment of duty" or "protection of rights"

contention 1: one way the resolution deals with duty (i.e. the duty to protect innocents)

each argument in the contention relates to protecting innocents

contention 2: another way (i.e. the duty to avoid violence)

Here's an actual sample case on affirmative of "The use of economic sanctions to achieve US foreign policy goals is moral."

VP – morality

VC- adherence to duty

contention 1: using economic sanctions fulfills the duty to moral agency

--moral agency is representing your moral beliefs to other nations

--we have a duty to moral agency in international politics

--using economic sanctions achieves moral agency by

1. using our economic power as leverage to punish immoral regimes
2. sanctions communicate to other nations that we do not reward immoral regimes with our money
3. we use economic power as a disincentive for others to violate our moral principles
4. not using sanctions and giving free trade to nations who violate our ideals violates moral agency because it is tacit consent to the other nation's actions

contention 2: using economic sanctions fulfills the duty to humanitarianism

By now, you see one possible way of using criteria. You can in case, define the specific argument (i.e. moral agency) then say why it is an important concern, then make specific arguments about how your side best meets that argument/standard. This is much more subtle than saying "moral agency is my criterion" particularly if you want more flexibility than a 2 or 3 criterion position.

Even with just one major argument or criterion, the structure is virtually identical, as you still identify 2 major methods of thought that creates your criterion. For example,

VP – morality

VC –protecting individual welfare

contention 1: pragmatic arguments about economic sanctions

contention 2: philosophical arguments

Either way, you will be dividing your contention in a way that at the end of the round you can say that each contention represents a voting issue that you will go for at the end of the round.

### **Strategy with value criteria.**

There are 2 things that you absolutely must do to win rounds with criteria.

#### **USE THE CRITERIA THROUGHOUT EVERY ARGUMENT.**

So many times debaters write criteria and forget them. They fail to look at their definition of the criteria and then don't impact case arguments to the value criterion. Even worse, they fail to identify their opponents' strategy.

For example, I used this case position on the resolution "Violent juvenile offenders ought to be treated as adults in the criminal justice system."

(negative)

VP – justice

VC- proportionality: we need to give people treatment that is consistent to how they are treated in society

contention 1: adult level treatment violates proportionality

1. children are viewed as less than adults in the legal system  
--they get fewer rights than adults  
--the law views children as having less responsibility because parents have control over them
2. under a social contract point of view, we give people legal responsibility that is consistent with their status as citizens  
--so if you have fewer rights, you have less responsibility
3. Giving adult level treatment violates proportionality by giving kids equal treatment with adults and never giving them equal rights. This violates the social contract.

A lot of people lost to this case because they would always say in 1AR, that we need to give treatment proportional to the actual crime. But that's not the position, the position is talking about proportionality as it relates to "how people are treated currently in society."

The debaters that lost to this case didn't recognize this twist in the definition, or they would drop it altogether. Therefore, once you extend the definition that we need to judge things according to how people are currently treated...the affirmative is forced to justify equal treatment under the law under different treatment in society... an almost impossible position to win.

Also note that every argument in the case somehow has strategic importance to the value criterion. The less responsibility claim and the social contract claim both relate to how people have been/should be treated. The last claim is just the impact and ties it all together.

Also, when you link every argument by impacting it to the criterion, you know what to extend in the round and you give yourself A LOT of arguments in case that you can go for later in the round. Most debaters just throw in lots of arguments without ever saying "this links to rights because..." Or they just say "this achieves rights because..." and just assert that the link exists without ever saying why they meet their criterion.

example of a good impact argument: (on a topic about hate speech)

"This argument links to the protection of individual rights, because when we provide people the right to choose to listen to free speech, we guarantee that when they want to say a controversial idea, that we will let them say it. Therefore, we guarantee that all people have the right and the freedom to speech."

My final piece of advice is...

**ONLY GO FOR ARGUMENTS THAT LINK TO THE VALUE CRITERIA.**

Arguments that don't have links to the criteria are a waste of time. You can ignore entire contentions that say nothing about how your opponent is appealing to their value criterion. For example, if an opponent has a VC of protecting life, but the entire first contention is only about protecting liberty, you don't even have to make any arguments on that first contention (of course you still would, but you wouldn't spend too much time on those arguments AND you would say the argument has no link to the VC)

So make sure everything links to your criteria and point out when your opponents' arguments don't. Also, be sure not to spend too much time on the criterion debate, and certainly don't throw a ton of answers to the value criterion if you don't have to.

Value answers should be to say why a particular standard does not work, NOT to dump answers as to why your opponent does not meet their standard---that's what the cases are for. I have judged debater after debater who in 1AR gives 5 answers to the VP and VC and runs out of time on their contention 2. Especially if you are affirmative, resolve the value debate quickly and move on, I can't say any more crucial advice.

If you are negative, use the time advantage should show how you win the round solely on your criterion AND on the affirmative's. Don't waste time dumping 6 answers at the top of the affirmative's case, spend that time on the aff case explaining why on each of their claims, they can't win their position. That's more damaging than missing case arguments.

As you can see, value criteria are very important, and if you keep their importance in mind when you are writing your cases and refuting, you can win a lot more rounds. Good luck!

**DEBATERS' DIALOGUE ON VALUES AND CRITERIA**

by Steve Davis

*“First there’s an opening quote that establishes your ‘thesis.’ Then come definitions from reputable sources. After that should be your value, a brief explanation of the value, and a quote from a philosopher supporting the value. Then you should present your value criterion, its definition, and another quote from a philosopher. Finally, you present your case.”*

That’s what I was always told about how to write the beginning of a case. If you were to do all that at the beginning of your 1AC and 1NC, not only would you bore the judges to death, you’d also waste at least a minute of your time.

The reason you read an opening quote, recite definitions, and quote philosophers is to build your credibility. You need to prove that you’re not a novice at her first tournament. But, you don’t need to do that stuff in order to establish credibility. There are other ways that require much less time. So, here’s a different plan for establishing credibility.

A proper opening quote, including the citation and thesis statement, should take less than 20 seconds. It needs to set the tone for the case, but it can be done in far fewer words than most debaters use. Two sentences should suffice for most cases, and sometimes just one. For example, when negating the resolution “Resolved: Global concerns ought to be valued above conflicting national concerns,” my opening quote and ‘thesis statement’ looked like this:

“The devotion of a government to the security and welfare of its own state is not a sin, to be remedied by a sermon about pursuing higher goals, or a folly to be avoided by becoming more rational and enlightened. Security for states, like breathing for individuals, is the prerequisite for the pursuit of all higher values.”

Because I agree with Professor Inis Claude, (The full citation goes here, but is not read during the speech. You never need to give more than a name unless doing so is essential for credibility or if you are asked in Cross-examination.) that while global concerns are important, when in conflict, a nation must ensure its well-being first, that I am compelled to negate the resolution.

The thesis statement is short. The cite is short. The quote itself is concise, but rhetorically powerful. It attacks the affirmative position by insinuating that it is proposed by an unrealistic starry-eyed liberal who has no real grasp of what it means to be a government. It diminished the opponent’s credibility, and casts hum as someone who has not thought out his position adequately. It also undermines the credibility of the “save the children” appeals that most affirmatives are probably based on.

Of course, the opening quote doesn’t actually do all that itself. But, it sets the stage for the debater to do it. Because it is the negative, the resolution doesn’t need to be read, and we move on to definitions.

The definitions that follow should only be definitions for words that are definitely going to be contested or words that you use in your case in an uncommon way.

Usually, you shouldn’t have to define terms at all, and it is a rare case when you need to define more than 2. This is, of course, all based on location. When I suspected that the judging pool was inexperienced, or that it expected me to read definitions, I’d often stick in the definitions of two or three of the terms. Also, early in a topic it can be useful to define some of the terms if you think the common definitions differ

from the way the terms will be used in the round. Defining a few of the terms when being judged by an inexperienced pool helped to create an atmosphere of preparation and confidence.

Don't get bogged down in the cites, though. Read the definition without a cite. Almost everybody will accept that. If you're asked in cross-examination where your definition came from, tell them. No big deal. If you want, you can even create your own definitions. The key is to actually look up the words, and read some articles about the topic.

"National Interest" may not be in the dictionary as a phrase, but you could fairly define it as "The stated or implicit goals of the people and organizations of a state." (and hey, I just made that up). If people ask you, you can fairly state "I constructed the definition from definitions in Webster's and from contextual readings." It makes you sound smart – maybe even more so than saying "It's from Webster's New Collegiate Dictionary," because it shows you've done enough research to construct your own definitions. Whatever you do, don't get bogged down in credibility wars. Black's Law Dictionary is not actually any more credible than Webster's, which is not actually any more credible than something I made up. The only way to win a definitional war is to present stronger logic and speak with authority. Never make claims of credibility based on your source alone.

Do note, though, that the purpose of a definition is to establish ground rules for the round, not to slant the debate in your favor. There is no reason, then, to propose different definitions as the affirmative then as the negative. Nothing impugns credibility faster than trying to cheat with shady definitions. If you find that you want to define terms differently for the two sides, it may be time to rethink your conception of the topic.

After definitions, the value and criteria are read. At this point, I'll make the transition into prompting dialogue. The bold represents someone who appears (I hope) a little dumber than the reader.

I'm confused. Sometimes you say criteria and sometimes you say criterion. What gives?

'Criteria' is plural, 'criterion' is singular. So...

The criterion is the protection of rights

The criteria are the protection of rights and the maintenance of governmental legitimacy.

He had a dumb criterion.

His criterion was silly.

His criteria were silly.

He really doesn't understand how criteria work.

Well, now that we've gotten that straight, maybe you should explain how values work.

The value is some ultimate good. It could be something vague, like justice, morality, utility, or governmental legitimacy, or it could be something demanded by the resolution, but still very vague, like economic justice (demanded by Resolved: Capitalism is superior to socialism as a means of achieving economic justice) or gender equality (demanded by Resolved: The pursuit of feminist ideals is detrimental to the achievement of gender equality). Whatever the situation, your value will always be too vague to be helpful.

Why is there a value at all, then? Well, there has to be a way to figure out who wins the round. If Bob and John debate about whether or not a tax cut is a good idea, there are lots of arguments. To determine which ones are the most valid, they must decide on some sort of mechanism to weigh the arguments. If for instance, they chose the natural right of liberty, they would probably decide in favor of a tax cut.

Limiting the government's power strengthens individual rights. If the tax cut also resulted in some individuals dying of starvation, Bob and John would regard that result as interesting, but because individual liberty was not violated, they would say that the deaths were not important to their decision.

If however, Bob and John believed that Life was the most important value, they would come to the conclusion that people must be taxed so that the poor don't die. The fact that individuals would lose some of their freedom would have to be regarded as immaterial to the debate because the loss of freedom does not affect whether people live or die.

But what if Bob thought that Liberty was most important and John thought that Life was most important?

Well, then they'd have to appeal to an even higher value, like Justice.

### **Does that ever happen in real rounds?**

No. In most real rounds both debaters' value and criteria get lumped together and boiled down to "good." All arguments have impacts, but those impacts are not given in the context of a value. People say "Thus, negating the resolution saves lives," instead of "Thus, Negating the resolution saves lives, which fulfills my value criterion of the preservation of life, and is therefore, Just." Both debaters make appeals to "good" for the entire round. Then it ends and the judge is confused about how he can weigh the merits of each arguments. In the end, he votes for the one he subconsciously thought was more competent.

Sometimes rounds go a little better than that. Sometimes one debater has a good idea of what values and criteria are supposed to do. In those rounds, the competent debater appeals to his value and criterion while the other debater just appeals to "good." In the last speeches, the competent debater brings everything back to his value and criterion while the other debater does not. The judge looks over the round, sees one clear standard that was used throughout the round, and votes for the competent debater who used a value and criterion.

Ok, ok. You've made your point, but how does one use these "values" and "criteria?"

Ok. Values are vague. In four years some people never use more than four or five different values. With the exception of topics that mandate a specific value premise, justice, morality, and governmental legitimacy should cover almost every topic. This is because they're universal principles and everyone seems to want them. They're not as controversial as liberty, equality, or utility. But a consequence of their broad appeal is that they aren't very specific.

This raises some issues. If morality is so broad, how does one know when it is being achieved? As it turns out, value criteria are the answer. Value criteria are criteria to determine if a larger goal is being achieved. They serve as a proxy for something unobservable.

Here's an example. Suppose you were going to blow up a ship at the bottom of the ocean with a radio detonator. It's too far away for you to see the explosion yourself, and the radio transmitter doesn't tell you whether the detonation took place. Whether or not the ship was destroyed is not something you can observe. However, you could say to yourself "Ah! If the ship blows up, debris will float to the surface." At this point you are using the appearance of debris as a proxy for determining whether the ship has blown up. It is your criterion for judging success.

In the same way, justice is unobservable. It's too broad and complex. However, we could say the most important part of justice is the protection of rights. The protection of rights is much more observable.

Thus you could use the protection of rights as a proxy to determine whether justice is being achieved. The protection of rights is your criterion for judging whether justice is achieved.

Oh, I see. But wait! How do you know that the protection of rights is the right criterion for justice? Why not giving each his due or governmental legitimacy?

Well, first off, giving each his due is a definition of justice, not a criterion for justice. To say that justice is giving each his due does *nothing* to explain what justice is or how to achieve it. Most importantly, giving each his due is not observable, and thus cannot serve as a proxy for justice. We're left thinking, "Ok, we're going to give each his due, but what is he due?"

We may decide that his due is to have his rights protected, but in that case, the real criterion is the protection of rights, not giving each his due.

**So, are criteria useful if they don't clarify the value?**

No, if the criterion has not clarified the value, it has not served its purpose. It has wasted your time and your judge's. You should be ashamed of yourself.

**In the above case, why not use a criterion of governmental legitimacy, or liberty, or anything else?**

You could use those criteria. It all depends on your purpose. Going back to the ship example, you could have different goals. If the goal was to make the ship break up, then debris coming to the surface would be a good criterion. If, however, your goal was to blast open the hull so a trapped scuba diver could swim out, the appearance of the diver would be a better criterion (and in fact, the appearance of debris along would indicate that something had gone wrong).

In the same way, the protection of rights might be an appropriate criterion when discussing whether or not the government should pass laws against victimless crimes, but governmental legitimacy might be a better criterion when discussing whether the government should send aid to foreign nations. It all depends on what issue you're discussing and what side of the issue you're on.

**Could you give an example of how this would work with a topic?**

Sure. Let's look at a topic like Resolved: Capital punishment is justified. On that topic, the vague value to use is justice. There are many value criteria that could be used. The protection of rights, the protection of the innocent, life, appropriate retribution, societal welfare, governmental legitimacy, and so on. The best criterion is the one that matches your arguments. As the negative, you might decide that the most important arguments are ones that attack the government's right to kill people. If you were going to do that – attack the government's mandate, then governmental legitimacy would naturally be the value criterion for you. If you wanted to focus on something different, then a different value criterion would be appropriate.

The great thing about governmental legitimacy is that arguments that directly apply to the legitimacy of government are naturally valid, but other arguments that aren't as directed can also be used. You just say, "Affirming does this bad thing 'X' and 'X' delegitimizes government." For instance, "the affirmative violates rights without citizens' consent, and that delegitimizes the government, and is therefore unjust." Or, "the affirmative violates citizens' wishes, and that delegitimizes government, and is therefore unjust." Pretty neat.



**Could you give another example?**

Sure. Suppose the topic is: "Resolved: The adolescent's right to privacy ought to be valued above a parent's conflicting right to know." You make up your arguments and decide that most of the good arguments for the affirmative all have to do with the fact that parental influence may prevent a few mishaps, but on balance just prevents the kid from growing up. In that case, you might decide that the most important thing in the world is to have adolescents grow up into healthy, well-adjusted adults. The result is the following value and criterion:

Because the parent's right to know and the adolescent's right to privacy are both ultimately concerned with the well-being of the adolescent, my value will be adolescent welfare. Adolescence is merely a transition between childhood and adulthood. Its ultimate goal is to create morally responsible, autonomous adults. Therefore, my criterion will be the development of the adolescent.

Everyone can understand the idea of adolescent well-being. The criterion then narrows that idea into something specific: the adolescent's personal and moral growth. It excludes arguments about short-term harm as long as the adolescent isn't killed or permanently injured. The case arguments all impact to adolescent development.

The value criterion is useful here because it defines the value premise more narrowly and, if accepted, it eliminates the negative's strongest arguments as irrelevant. If we discount adolescents' immediate safety in favor of fostering long-term development, we create a world more likely to affirm.

**Couldn't the criterion be something a lot more specific?**

Why yes, it could. Often times, you can actually put an assumption for an argument in your value criterion. For instance, most topics have a lot of arguments. There are good arguments and bad arguments. Some require short answers and some require very long answers. In rounds people get used to making the same responses to the same arguments over and over again. If, however, there's a common argument that everyone dismisses with a short response, and someone makes an entire case out of it, there can be trouble.

For instance, let's look at a topic, Resolved: In United States policy the principle of universal human rights ought to take precedence over conflicting national interest. One possible argument was called 'moral relativism.' This negative argument states that the world is full of different systems of morality, some of which allow genital mutilation, incest, and other acts which our Western systems of morality deem despicable. But, the moral relativists claim, there is no way to adjudicate between these systems of morality. There's nothing about one system or another that is inherently better. All the mechanisms that we would use to weigh the benefits of different systems are part of the systems already – you can't use a liberal rational system to adjudicate between liberal rational thought and Christian thought. There's nothing outside the debate that can be used to judge the debate.

This isn't a great argument. What it really says is that there is no objective morality, and therefore, moral judgments can't be made. The impact of the argument is that because there can be no principle of universal human rights, we must negate the resolution. Doing otherwise would impose our Western morality on other people who may not agree with it.

Usually people dismissed it with a quick response to the effect of "this is dumb." However, if someone made her entire case out of moral relativism, you would have to take it seriously. You couldn't just say "this is dumb" because they spent two minutes explaining the argument. By spending so much time on it,

they gave the argument an air of legitimacy that must be torn down completely. This can be a good strategy if people tend to dismiss an argument quickly, even though it is a good argument.

That was really long-winded. Did you forget that you were trying to answer my question about whether value criteria could be more specific?

No, I just hadn't gotten there yet. The answer is 'yes,' the criterion can be more specific. The reason you would choose to have a more specific criterion is if you have a case that is very narrow. If your entire case is about proving moral relativism, then you should have a very specific criterion. Or, if you're arguing about "Resolved: Human genetic engineering is morally justified," then you might present an entire affirmative case about the reduction of human suffering. So, your value paragraph might look like this:

My value premise is morality. While the specifics of morality are often disputed, one almost universally accepted belief is that reducing human suffering is moral. Therefore, the reduction of human suffering will be my criterion to achieve morality.

The paragraph is very short. It tells the judge what morality can be judged by (the reduction of suffering) and it limits the debate to just that. The reduction of human suffering is a criterion for morality, but by presenting something so narrow, it limits the debate. All the affirmative needs to do is prove that one little thing. In fact, the whole argument is:

1. Something is moral if it reduces human suffering no matter what the other consequences.
2. Human genetic engineering reduces human suffering in some way.

The first of those two claims is suspect, while the second is not. By hiding the first argument of the case in the value criterion, the other debaters always missed it, and by making the second argument so large (it took the remaining five minutes of the speech) the second argument seems like the important one. The result is that debaters always attacked the big second argument that was pretty uncontested, and left the first argument alone. Ultimately, they lost.

Oh, so you're saying people can hide arguments in the criteria.

No, not exactly. "Hiding" implies two things: first that it's underhanded, and second, that it's not really allowed. What I described above is neither of those. What a narrow value criteria does is limit the scope of the debate. By saying that the reduction of suffering is the most important element of morality, the affirmative is just making a claim about morality. It is perfectly legitimate for the negative to contest the affirmative's definition of morality if he disagrees. All I'm saying is that by choosing a more specific criterion, you get to put an assumption in a place that a lot of debaters tend to ignore. The value and criterion can win every round if they're used properly – not on their own, but by framing the debate so that your arguments are the relevant ones.

This is basically the same thing that was done above in the example about whether parents should respect adolescents' privacy. By framing the debate in a certain way, one side can make its arguments relevant and the opponent's arguments immaterial.

This isn't to say that given a resolution like "Resolved: In a just social order the principle of liberty ought to be valued above that of equality," that you should choose liberty or equality as your value criterion. You're not hiding an argument in your criteria, you're begging the question. By saying that one of the principles in the resolution is the prerequisite for your value, you've decided the round before you get to your first contention; there's nothing left to prove. That's bad. On a topic like that, there really isn't a way to sneak something into the criterion to decide the debate. You've got to choose something broad and deal with the diverse arguments that the topic implies.

**How would you construct a criterion for a broad topic like that? Could the criterion be something very vague?**

Yes. Many cases use a criterion that's really vague because doing so allows a greater range of arguments. For instance in that debate between liberty and equality, a value and criterion paragraph might look like this:

Since the resolution mandates that justice be the principle by which we evaluate a social order, justice will be my value premise. Justice is defined as giving all people what they are due, and people are due respect and dignity; a recognition of their inherent worth as human beings. Therefore, my value criterion will be the recognition of the worth of each individual.

The paragraph is short. It includes a definition of justice that both helps to narrow what justice means and sets up the criteria. It's concise and pretty uncontested.

Hey buddy, earlier you said that criterion were supposed to be something that was measurable. How are you going to measure whether people are respecting the worth of each individual? How is that any more specific than "giving each his due?" Hypocrite.

Yes, in this case the criterion doesn't narrow the range of arguments. But, seeing that you've read through a good chunk of this already, I thought we could take you up to a more advanced level. While the criterion doesn't eliminate very many arguments from the debate, it does narrow the possibilities rhetorically. Whatever the opponent's value and criteria are, they're probably pretty vague because the topic is so broad. By choosing a phrase like "respecting the worth of each individual" the criterion has created a way for the affirmative to rhetorically distinguish his impacts from everyone else's appeal to 'social welfare,' 'utility,' 'justice,' and so on.

At the end of the round, the judge will be faced with a decision. He can evaluate the round in terms of who is more "just" (as the opponent put it) or who "better respects the worth of each individual." Because the second phrase is more memorable, he's less likely to get arguments that impact to it confused with arguments made in other rounds. The arguments that impact to that criterion will stick out in his mind somewhat. This gives the debater a slight edge.

Oh, so the criteria can narrow the arguments allowed in the round, or it can rhetorically distinguish your arguments.

**Exactly.**

But wait, what if I use two criteria? Or, what if I'm a dork who uses two criteria, but calls them a "dual-pronged" criterion?

Don't. Just don't use two criteria. It's not a good idea. It means that your position is fragmented and implies that you don't have one solid line of reasoning. It also creates a structural weakness in your case.

For instance, suppose someone's value is justice and their criteria are the protection of rights and the maintenance of governmental legitimacy.

You: Your value is justice, right?

Him: Yes.

You: And your criteria are the protection of rights and governmental legitimacy, right?

Him: Yes.

Then you ask him questions that give him some difficulty

You: Which of these is more important?

Him: Governmental legitimacy.

Now, his first criterion just doesn't matter. If he based one contention on each criterion (as most people with two criteria do), then you can add a beautiful response to the entire first contention: the first contention is no longer relevant to the round. As long as you win governmental legitimacy, the other criterion, and therefore all arguments that appeal to it, are totally irrelevant.

But, sometimes people won't just give up one of their criteria. In that case, cross-examination might proceed like this:

You: Which of these is more important?

Him: Oh, they're equally important.

You: So, they are both prerequisites for achieving justice? -- You must win both to achieve justice?

Him: Yes.

And, now, your opponent must win both of his criteria to win the round. What that means is that in your last speech, you can point out that if you better achieve *either* governmental legitimacy *or* the protection of rights, you win the round.

But, usually people don't admit that they'll need to win both criteria – it makes it harder for them to win after all. If someone insists that both criteria are equally important, you can still find out which one is *actually* more important by coming up with a situation in which they are in conflict and asking which should be prioritized. For instance:

You: What happens if I win one criterion and you win the other?

Him: [being unrealistic] Such a thing could not happen.

You: [drawing on his definition of governmental legitimacy as following the wishes of the people] You say that governments are legitimate when they follow the will of the people, right?

Him: Yes.

You: Suppose, then, that the people wanted the government to violate the rights of part of the population, say by slavery, or excessive taxation, or something like that. What would be the most just thing? Should the government be legitimate or should it protect individual rights?

Him: Um...

And then he tells you which is more important. Then, the other criterion (and thus the arguments that appeal to it) no longer matters. You're golden even if he comes up with a witty reply such as:

Him: Um... Well, in *that* case, the government would only be legitimate if it respected people's rights.

One of two things happens here. Either he's admitted that his criteria are the protection of rights and governmental legitimacy, only the protection of rights is more important, or he's admitted that his conception of governmental legitimacy was wrong, and that as a result, his arguments about governmental legitimacy are wrong. You may not be able to get him to admit that in the remainder of cross-examination, but which interpretation is appropriate should be clear from the rest of the case and his behavior in the rebuttals.

Naturally, not every cross-examination will go this smoothly, but eventually you should get even belligerent opponents to admit things that will undermine at least half their case.

**So, there's no way to ever use two criteria?**

Actually, there is, but it's only in very special circumstances. For instance, you might be able to set up two criteria that serve as burdens for your opponent. When debating "Resolved: Capitalism is superior to socialism as a means of achieving economic justice," the negative might set up criteria like this:

My value premise is economic justice, derived from the intuitive principle of fairness - giving each his or her due. In his book Searching for the Common Good, Charles J. Erasmus clarifies this principle by defining two relevant principles of "due." First, individuals should receive economic benefits that reflect the effort they have invested. Clearly, economic justice is not being served if one man is rewarded for working, while another is man is not. Second, the means of acquiring benefits must be open to every individual. Intuitively, we know that justice requires that every person must have a fair and equal opportunity to compete for a given benefit. Therefore my two criteria are the proportionality of labor to wages and equality of opportunity

Charles Erasmus is quoted because this case was run at the national tournament – a place where I felt it would be beneficial to include more evidence and slightly more complete cites because of the diversity of judges (the full cite was written elsewhere). Sometimes people really expect something and can be very disappointed in a debater if it's not provided. Note that I didn't quote him directly because he didn't present these concepts as concisely as I wanted them, but I do cite him for the ideas.

The criteria are worded to sound neutral, even though they aren't. The negative basically achieves these criteria without contentions.

**All right, I understand now that two criteria can be ok in some really rare circumstances. How about no criteria? Why can't I just read a bunch of arguments?**

Hmm... First off, it appears that you haven't been paying attention. We'll start over. You need a value and criterion because they set up the standards by which the round is weighed. At the end of the round, if the judge knows that affirming is going to save some people's lives, but it will cost thousands their freedom, he's left with a dilemma. If, at the end of the round he's got the same conflict, but he's also got the negative telling him over and over again that the protection of natural rights is the only way to preserve justice, he knows how to vote. The value and criteria provide a structure to rank the importance of different arguments. They tell the judge how to vote. Not having a value and criteria puts more power in the hands of the judge, which is a bad thing, or gives your opponent the power to frame the round however he wants, which is a disastrous thing.

When you don't present a value and criterion, you're essentially saying one of two things. Either you want to weight the round in a utilitarian way, or you want to weigh the round in lots of different, possibly contradictory ways. Both are bad.

If you're setting up a utilitarian calculus, criteria can still be helpful because they can distinguish between non-commensurable goods. (Non-commensurable means goods that cannot be exchanged. We cannot equate money with freedom, for instance. There is no way to say that a man's freedom is worth \$100 or \$450, or any amount of money. You just can't exchange them). So, when one side loses lives, while the other jeopardizes equality, both things are bad in a utilitarian framework. A criterion could tell the judge which of the harms is more important, and therefore, which side to vote for.

If you're just presenting a morass of arguments with no clear connection, the situation is even worse. Your arguments could contradict one another, and because they don't all appeal to a central value, there's no way to weigh between which arguments are important and which are not. The usual strategy I've seen is for debaters to make whatever is dropped the important issue. This is bad debate and it should always lose to someone with a coherent value and criterion. If only one side provides value and criterion, most judges will automatically accept it. The result is that one side gets to frame the debate however he wants. In turn, this means that many of the value- and criterion-less debater's arguments will be made totally irrelevant and that he will lose.

So, yes, you must always have a value and criterion.

### Why is all this important to me as a debater? How does this help me win rounds?

Ah, the most important question yet. Criteria help you win rounds because they tell the judge how to evaluate the arguments in the round. In a round where there is no clear standard for evaluating what arguments are important, the judge is forced to do all the weighing by herself. This is always a bad idea, as judges and debaters rarely see eye to eye. It is therefore important to do a few things in rounds:

1. In your constructive speech set out a clear criterion. There should be no question about what the criterion is, how you achieve it, and why your opponent does not.
2. Justify your criterion. In the constructive, it should be obvious why the judge should adopt your standard, but don't stop there. In rebuttals you need to then prove why your criterion is *more* appropriate than your opponent's. Supposing that you're debating "Resolved: Global concerns ought to be valued above conflicting national concerns," as the affirmative your opponent's value and criterion paragraph might look like this:

The resolution asks us to resolve a choice of actions. Morality will be used to determine the more important obligation. Morality can be defined as a set of actions that best fulfill one's duties to the well-being of other people and society. Thus, my value criterion will be the fulfillment of reciprocal duty.

As the negative, your value and criterion paragraph looks like this:

Because the resolution asks to resolve a choice of governmental actions, my value will be governmental legitimacy, defined as a set of actions that best fulfill the government's obligations to its society. My criterion, therefore, to determine whether the government is being legitimate must be its society's welfare.

The first sentence of each paragraph reveals which side has the stronger value. The affirmative makes a bland appeal to the fact that a decision is being made without any reference to the resolution. Of course a decision is being made; it's a debate round. The negative, on the other hand, points out that the resolution calls for a specific kind of decision: a governmental decision.

While a textual analysis makes this all clear, a debate round rarely gives judges the opportunity to compare the cases. Thus, the negative will need to address the affirmative's value and criterion during his rebuttal. He might say something like this:

My opponent's value of morality is too vague for this round. While morality can be an appropriate decision-making mechanism for individuals, *this* resolution asks us

specifically about the duties of government. As such, my value of governmental legitimacy is more appropriate for the round.

And, *viola*, you've said his argument, you've explained why it is inappropriate, you've stated your argument, and you've explained why yours is better. This is always necessary. You'll want to explain all this again during your final rebuttal, just before you state your voting issues.

If the criterion is particularly bad, you can even take it apart in cross-examination.

Sometimes, in good rounds, neither criterion is agreed on. When both debaters are competent and provide reasonable criteria, you can still win the round by thinking. Consider your criteria and your opponents and see if there is some broader value that incorporates both. Perhaps this new criterion can even be agreed on during cross-examination.

From a judging perspective, these rounds are often the easiest to pick out the winner. If both debaters agree that they should achieve Y, there is no ambiguity – arguments that achieve the old criteria of X and Z drop out of the round, while arguments that achieve Y are considered. Instead of trying to weigh non-commensurable impacts against each other, the judge can figure out what arguments are important, and, therefore, who wins.

3. After you have defended you have justified your position, or settled on a new criterion, stick to it. Relate every argument back to the criterion you are using. Don't be afraid to be say, "whatever side meets this criterion should win, and I do that by..." Stick to your criterion. If you have done your homework, you should know how you're the arguments responses fit into a tight and coherent structure, proving beyond a doubt that you achieve your criterion and your opponent doesn't.

Finally, don't be afraid to lay out how criteria are supposed to work. Don't be condescending – that will only make judges hate you. But, often times, new judges don't know the technical aspects of Lincoln-Douglas and experienced judges can forget. A few words like this would be appropriate while giving voting issues:

The value premise is morality. The criterion that we've both agreed upon for achieving morality is the reduction of human suffering. Therefore, we've agreed that whoever better reduces human suffering ought to win this round. I believe that the affirmative best reduces human suffering in three ways. First.....

And, at the end of each voting issue, you should relate the impact back to the criterion. For instance:

... Therefore, human genetic engineering has proved its scientific viability. With only a few more minor advances it will be possible to diagnose and treat previously incurable diseases. This will undoubtedly reduce human suffering. Thus, the first reason to vote affirmative is that I better reduce human suffering and therefore achieve morality. I meet the standard that my opponent and I have agreed upon.

Also, you can dismiss arguments which do not relate to the criterion:

My opponent argues that genetically altering human beings is a moral crime because it allows us to "play God." While this intangible harm is interesting, it does not heighten or alleviate human suffering, and so cannot be considered when deciding the round. If anything, a concern for this sort of ethereal impact harms people by denying research that may lead to cures.

And then you finish your speech and the judge votes for you.

**So, how many of my voting issues should relate back to my value criteria?**

All of them. Every single one. If an argument doesn't impact to your criteria, it doesn't have anything to do with the round. Not only is it irrelevant to your case, the judge may well realize that and not vote on the argument. The result is that you've just wasted your time. You might as well have done an interpretative dance.

Ah. So, the value is some vague concept that everyone uses, but the criteria is where the real action is. Criteria can be used to narrow the scope of arguments or to rhetorically distinguish your arguments from your opponent's. You can nest assumptions in your criteria where your opponent often misses them. During a round I should establish a criterion (mine, or the new criterion that synthesizes my criterion and my opponent's) and refer to it constantly. Every argument should relate back to it; every voting issue should impact to it. Once I've done all that, the judge will have a clear picture of how to evaluate the round, and I should win. Right?

Exactly.



## CRITERIA VERSUS BURDENS

by Seamus Donovan

I remember the first time that I was confronted with the difficulty of using the criterion correctly. It was the winter of my sophomore year in high school and I had just started debate. Trying desperately to figure out everything before my first novice tournament I was reading a book on how to do Lincoln-Douglas debate, and I had just gotten to the section on criteria. The book explained there were essentially four criteria used today, Utilitarianism, Deontology, Futurism and Cost/Benefit Analysis. As I was trying to make sense of the oversimplified ins and outs of each standard I happened to ask one of my fellow debaters which of the four criteria they liked best. Somewhat puzzled they replied: "What four criteria?" I proceeded to list off the four 'standard criteria' as the face of my fellow debater grew more puzzled. "I don't recall having used anymore than one of those criteria ever" he answered. Well this threw me, the only authority I knew up to this point in debate (the author of a brief introduction to doing LD book) was now clashing directly with one of the austere individuals on my team that I respected and whose approval I wished to earn. I went on to ask several other people on the team which criteria they used and how they used them. I was met with as many different answers as people I asked. Distressed I went into the Debate Office and asked my coach how exactly I was supposed to use the things. She responded that she was out of touch with what was going on in the debate world right now, but that eventually it was just something I would know. Confused I asked for further explanation. She relayed a story about the most successful debater we'd had in our program. She said that going into his first tournament he was about as baffled as me, and remained so for about the first half season of his debate career. Crestfallen I worried that perhaps I would never understand how we were supposed to use criteria, weighing standards or whatever they really were called. My coach responded that in fact, a period of bewilderment was quite normal when entering into debate and that one-day you just "get it". She said one morning the debater that we had been discussing walked into the office and said that it suddenly made sense to him. He knew exactly how to use criteria, he knew exactly how to compare them, and he knew exactly how to win with them. One day it just made sense.

I suppose the most basic purpose of this handbook is to facilitate today's debaters in reaching that point where it all makes sense. I don't think that I truly understood the criterion until late in my senior year, and even now from my experiences judging I know that I misused it more times than I'd like to admit all the way to the end of my debate career. I hope that my assessment of the basics of criteria building is helpful to you and that my attempts to resolve some more complex problems facilitates your understanding of criteria further.

Before attempting to address some of the more hard-hitting questions about criteria it's necessary to nail down at least a working definition of what they are, and why we use them in rounds in the first place. To me, a criterion is any standard that a debater uses to try and weigh a debate round. That means any standard that a debater uses to compare arguments to each other in order to show which is most important, relevant or meaningful to the round being debated. The criterion is supposed to be directly linked to the value as a standard used for evaluating the relevance of arguments in terms of that value. The basic idea is that the value is what we (the debaters, the judge, anyone concerned) want to 'achieve' in the round. The previous sentence alludes to an issue of some contention itself. There is some disagreement about the appropriateness of speaking in terms of having 'achieved' one's value in a round. After all the mere fact that the judge votes for you, (hopefully) is probably not sufficient to 'do' justice, or to 'achieve' governmental legitimacy. I believe a more coherent way to describe the function of the value in more concrete terms is to say that when posed with a certain ethical or moral question it is a compelling imperative to put the value in question first in our decision making process. This may sound a bit confusing at first. Hopefully an example will help to illustrate my point. Let us say that engineers at a car company were trying to build safety equipment for a new vehicle. When deciding what criteria to use

in order to tell the computer to deploy the airbag (a matter of no small importance as airbags can save lives in a crash, but could be potentially harmful should they accidentally go off during normal driving) the ‘value’ they are in essence concerned with is safety, or more specifically the safety of the passengers that will be riding in their cars. Now it does not make sense to say that should they design their airbag sensors correctly that safety has been ‘achieved’ because the entirety of the rest of the vehicles equipment is still up in the air. In addition, this safety is only valued in a micro setting of society, it says nothing about our safety from crime, disease or attack. Therefore, I believe that it is more correct to speak of these engineers putting safety first in their decision making process rather than ‘getting’ safety. This may seem like a trivial matter, but I believe that it is both a rhetorical and symbolic mistake to assume that should we make a prudent decision in one small area of ethical dispute or social policy that we’ve somehow achieved justice, or liberty or equality. Because, as in the carmaker example, even if we affirm a particular resolution and decide that justice has been ‘done’ during college admissions when affirmative action is used to select students, that decision says nothing about criminal justice or social welfare. I believe it is rhetorically dangerous to start telling ourselves (and judges) that we’ve achieved justice by reading a six-minute case, or putting out some rebuttal blocks. Even if it’s only a minor issue, which I believe is itself contentious, it seems more reasonable to avoid claiming to have gotten justice in the closing minutes of our round and instead claim only that the value we’ve selected best represents the important concerns we have when faced with the difficult decision posed by the resolution.

This brings us to the question of how exactly criteria and values relate to one another. It seems that if the value is the ideal that we keep in the back of our minds when weighing issues in our decision, the criterion should, somehow, tell us to we separate the arguments presented into workable, comparable components that add up to a decision. Quite often we are faced with resolutions that have a very broad research base. More and more LD debaters are cutting full accordions worth of research on any given topic. This translates, in addition to denser more complex arguments, to sometimes just more arguments. This is fine except that for many debaters the flow then simply becomes a battlefield of extensions and drops and the arguments they do end up winning often fail to synthesize into a cogent whole. Quite frequently judges find themselves forced to evaluate a mess of arguments, some won by either debater, without a useful way of ordering them by importance or forcefulness in terms of the value. Ideally that is what the criterion should do in a debate round; it should give the judge a way to sort out the arguments, know what it means in terms of the round when each argument is won and provide a mechanism for comparing important arguments to each other.

This is why the criterion is so important to the debate round. Without a criterion, there is very little for the judge to go on when trying to “figure out” the flow and render a decision. These are surely things that most of you already know and that have also been stressed other places throughout this book, however I emphasize them so that we can all keep in mind why we’re here in the first place. Presumably, that is to discuss how to use these wacky things we call criteria. In addition, many people learn what is, in my opinion the wrong way to use a criterion and it hurts them later on in their debate career. Some people consider the value to be the actual judging standard for the round and simply use the criterion to “flush it out”. Others use the criterion simply as a stepping off point for a few of their arguments while the rest of their claims have a more “thrown out there” quality. In several rounds I’ve judged, a debater will set out a criterion of utilitarianism, for example, and have about a third of the arguments on the flow relating to that criterion while the rest seem entirely random (at least to a judge that considers the criterion the most important part of formulating arguments). In some cases, after setting out Utilitarianism as one’s criterion, debaters will lob an argument about not using man/woman as a means, seemingly for good measure. In my opinion it is useless to put out an argument that does not relate to your criterion, the only possible exception being if you should choose a rather unorthodox value and need to make some arguments as to why your value selection is valid. Other than that, I believe that if an argument does not justify the relation between your value and criterion, justify the use of the criterion itself, or explain why you win the round based on that criterion, (i.e. meet it, achieve it, get it, do it or whatever jargoned term

you care to use) then that argument does not belong in the round. Often when a debater points out to their opponent that a certain argument does not relate to their criterion, the offending debater tries to emphasize the quality of the argument rather than answering their opponent's objection. In fact, I've had to ignore many brilliant arguments have been ignored in rounds I've judged when they have not related to a standard used by one of the debaters. One function that a criterion serves for the judge in a round is a way of sorting arguments. If a certain argument in the round does not relate to a standard it is essentially useless to the judge. If the value and criterion taken together are supposed to show the judge a way to vote, arguments that don't fit with the standard a debater sets up don't really fit into the round all that well. Hopefully this gives you some idea of how important a standard is, and how important it is for your arguments to justify your standard and then prove that you meet it. If an argument cannot do one of those two things, it is of very little use to you, and equally important, to your judge.

It seems at this point that a basic discussion of what a criterion is and how it works in the debate round has been sufficiently covered I believe that we can now move to some more difficult and, in my opinion, interesting issues. While I would not think of portraying this as an exhaustive list of the current issues in debate theory the controversies discussed herein do have a great deal of importance for debate.

Were we able to take a class in debating, LD Debate 101 for example, probably the first that would be taught would be a lesson in values. Students would learn the big ones: Justice, Morality, Governmental Legitimacy, Equality Liberty, etc. Then our young debaters would learn short synopses of each value that they could easily regurgitate in a debate round. Finally they would learn how to explain why each value was important. If we were to say that this fictional LD think tank was particularly ambitious, the students might have to explain why the value itself was important to have in a debate round. Most student's explanations would probably go something like this:

Debater1: Why do I have to have a value?

Debater2: Well because we all value things and in order to decide a debate round in *Value Debate* we have to know what the most important value is.

We will return to our debaters dialogue shortly, but first I would like the readers to take pause and contemplate a few questions. First, I would like the reader to wonder, keeping in mind resolutions they have debated, why they would call their activity Value Debate. Second, I'd also like you to ask yourself how long in your average case (affirmative or negative) you spend on your value. Finally, I'd like you to ask yourselves how difficult it is to prove that something is the most important value in any given situation.

With those questions in mind, let us return to the riveting cross-examination drama going on between our two intellectual pugilists.

Debater1: I'm not using a value today, should I automatically lose?

Debater2: Of course, you have to have a value.

Debater1: Why?

Debater2: I already explained, we need to know what is most valuable in terms of the resolution we're debating, if we don't know what to value, there's no way we can debate values and this is after all, Value Debate.

Debater1: Why do we call it value debate?

Debater2: Because we discuss values.

Debater1: And why is it that we have to discuss values every round?

Debater2: Because it's value debate.

It seems to me that the two debaters we're discussing act like two ships passing in the night because they both have very different conceptions of the activity. Debater2 is confident that in an activity that is designed to discuss values logically, a specific value is necessary. Debater1 is clearly skeptical of this proposition.

I think that a good deal of the mysticism and grandeur that surrounds the Value (a large V denotes the Value as we use it in LD as opposed to something being valuable) comes from the fact that our activity is generally labeled as Value Debate. This probably dates back to the very early days of the activity. It is, however, my opinion that the unwritten law that LD debate must discuss questions of value is, in fact, unfounded. While it is true that many times the ideas and issues implicit in LD debate resolutions bring to mind various values, this is not an iron clad rule. Some resolutions practically specify a very specific knockdown drag-out fight between two values. If a debater were asked to debate: "Resolved: Equality is a better value than Liberty", a clear clash of values will become apparent. However, were we to debate a less specific resolution like; 'Resolved: Institutions of higher learning ought to use affirmative action policies to promote racial diversity and tolerance' the actual value clash that is supposed to come out is not so clear. I do not mean to imply that values are not involved in our decision in such a resolution. In an abstract form values are involved in anything and everything we do. When I go to the grocery store, I, of course value the food I'm buying, just like I value not starving, that's the whole reason I'm at the grocery store anyway. However, to suggest that those are the central values of people that go to the grocery store overlooks the simple fact that most people really don't think that way. The value-centric way that LD debaters reason is a product of a very counterintuitive teaching process. While values are of course important, most people when presented with a question, even a 'value oriented' LD resolution would not think to put X value up at the top of the list of the things that we want to 'get' out of a debate round, or even burn it in the front of their minds as the driving force behind our thoughts as I discussed earlier. This is why I believe that the criteria that we decide on in debate rounds are much more important than what we label as the Value in rounds. The criteria chosen give us (hopefully) two competing theories on how we should weigh and compare every argument that we have in the round. I think many times that gives the value little to do besides sit there because most debaters were told you have to have one.

I believe that Values, as they are currently used in LD debate, are at best, generally unnecessary, and at worst, harmful to the interests of the debater. The way that the average debater now approaches most resolutions precludes a very good debate about what value is more important. In addition, very few resolutions are actually worded in such a manner that they lend themselves to a clear-cut value debate. Occasionally one will come out that is specific enough that there are two clear values in conflict and most of the debate can revolve around picking one as clearly better. If you have a resolution that says: "Resolved: A is more valuable than B" it's not hard to see why the debates on such a topic would be very value oriented. However, most resolutions that come out today seem to involve less broad questions of policy, or request an evaluation of a certain policy on a local, national or international level. These topics do not lend themselves to two clearly defined dueling values nearly as well as the type of resolution discussed above.

The reason that I believe that the Value Premise is quickly becoming obsolete in LD debate is because most topics demand a strict focus on standards to which an archaic and broad value premise does not lend itself well. This is not to say that having a value necessarily impedes the smooth functioning of your standard in a round, only that most of the time it does not help much. Essentially, if the criterion in your case does its job, it's not likely that a value is necessary in order to win. Ideally, the criterion is going to tell everyone what is and what is not valuable, what is and is not important. The job of any good standard is to sort arguments as they do and do not matter to the outcome of the round.

This, however, does not mean that values do not come into a debate round without a Value Premise. Implicitly any criterion or standard is going to carry with it a belief that something is valuable. If someone were to run utilitarianism as his or her criterion it is, of course, naturally implied that that debater considers human happiness valuable. Any time that we use a standard correctly it carries with it some values, this does not mean, that a Value Premise is itself necessary. Since it is the job of criteria to tell the debaters and judges what is and is not important, attaching a vague value on top of that seems unlikely to change for better or for worse how the standard that is being used tells us to approach the round. More often than not the values that are chosen by the debaters are almost interchangeable and the only real discussion that goes on takes place over the criteria in the round. When that is the case, the value is mostly functionless and sits on the backburner while the criteria decide the round. The fact is that in order to have a debate about what is better and worse, at base, requires a belief that certain things are better than others; yet the mere fact that our ideas are not valueless does not mean that it makes sense to label something as a Value in most debate rounds, anymore than it would make sense for a grocery shopper to mutter to themselves over and over: “I value my health, I eat food so that I don’t starve.” The way that the Value Premise is generally used seems a far cry from the way that most people or policy makers would approach one of the questions that we are faced with as debaters.

I do not mean to imply that the value is something that tends to detract from most debate rounds in any serious way. The main point of this discussion is to show how very important it is to have a standard and to use it well in debate rounds. I think that the criterion is so important that most any generic value could function just as well as any other in the majority of cases, so long as the criterion being used clearly defined how the round was to be weighed. To demonstrate this, let me refer to a few hypothetical situations involving various Value Premises paired with the same criterion on the topic: “Resolved: That government provision of welfare for the poor ought to be valued above individual economic freedom.” For this example, let us assume that each debater considered is affirming and has chosen a criterion of socialism.

### **Case One: Justice**

A debater running a Value of justice on this topic might begin by breaking out a quote from John Rawls extolling justice as the first virtue of social institutions. The debater would claim that the question the resolution asks is what each individual is due and that justice is naturally the best Value to use, then proceed to define justice literally as “giving each their due”. The debater might go on to the criterion and explain that what each person is due is a social safety net as success economic or otherwise is often arbitrary and that individuals deserve assistance should fate deal them a bad hand. Thus the debater would conclude, by presenting a theory of socialism that includes the provision of some sort of welfare for the less fortunate hopefully explaining along the way the various warrants as to why the standard that they had selected should be used as a measuring stick for that which is and is not just.

This seems like a plausible case structure that most people would not have a problem with, at least in my experience. It begins with a value gives a brief definition of what justice is, and proceeds to a criterion that explains what justice demands; in this case it would require (among other things) the provision of welfare for the poor. In addition, a good criterion would explain why justice requires that the provision of welfare for the poor is necessarily more important than economic freedom, but whether it does this or not has nothing to do with the value premise it is coupled with. Essentially we have a value, and a criterion that explains why that value demands an affirmation.

This whole scene is probably rather uninteresting to most readers, as they’ve seen plenty of cases unfold just like it without incident. It becomes interesting when we compare the stock value of justice to other more unorthodox values.

**Case Two: Value.**

Suppose that instead of Justice or Morality or any other traditional value, a debater got up on the same resolution and said: “The Value that I will be upholding today is value, which is defined as something most people would hold dear, find to be important or sacred”. This would no doubt raise a few eyebrows. Indeed I’m sure many debaters would say that such a “Value” is too vague to tell us anything informative. However I think that a similar claim could be made of most Values that are used because of how similar to each other, and the Value of value they begin to look when you start asking the right questions. We assume that claims that a debater makes should be warranted. However, all claims must start with some assumption. Let us say, for example, that I was to claim that murder is not justified. If I were pressed on that claim in a debate round, I might say that murder is unjustified because it takes someone’s life away without consent. If pressed to explain why consent mattered, I would probably say that as autonomous beings it is important that we recognize the will of each person as meaningful. I could probably hold out for a few more steps but eventually my original claim is going to fall back on the assumption that human beings are valuable. There is really very little I can do to warrant that claim and it should dissolve equally quickly. I could say that human beings are valuable because of their ability to reason. Unfortunately this leaves unanswered the question of why reason is valuable. I could argue that the capacity for reason is unique to human kind thus differentiating us from the rest of the animal kingdom. As I’m sure many of you have predicted by now, that, of course, rests on the unproven assumption that uniqueness is valuable for some reason. In addition one could just as easily say that were uniqueness the central value in our lives, we ought never harm the duckbilled platypus as it’s status as the only egg laying mammal makes it quite unique. My point here is that all values, whether they come in the form of a stated overarching concept or an implicit part of a criterion, are equally un-provable when we seriously begin to question why it is that we value them. Our values seem to be more a product of intuition than anything else.

What this means for the case that we are discussing right now is that the “Value of value” is just as valid as the Value of justice because they both involve making the same assumptions. Essentially values always come down to what we consider desirable. If I asked different people why we are willing to pay so much for diamonds I’d probably get several different answers. Some might say because they’re pretty. Others might say that their scarcity relative to other stones creates the value. Yet both of these answers have at their base the same idea, that we desire certain things and that those desires justify a high price for diamonds. One person desires a pretty stone, another a rare one, but beauty is quite subjective and one could easily attack the idea that rarity is valuable in and of itself. Essentially though, we all have different reasons for valuing things. The very fact that we value them is rooted in our intuition and is, in fact, intangible. It is not possible to explain why rarity would necessarily be important or why a diamond is pretty yet a common rock is not.

The implication for this, is that most any value premise a debater can choose will technically be just as effective (although admittedly, confusing) as that debater to stand up and say: “I Value value.” Or perhaps: “I value the value of value.” The reason is that if a value is defined as something that is important or good or sacred any other “Value Premise” will eventually collapse down to one of those things given enough questioning. Eventually a debater running a value of justice will have to say that each getting their due is important as a matter of fairness perhaps. Fairness is important because we are all equally valuable and no one is entitled to a position of privilege. Equality might be valuable for another reason but eventually it will come down to the idea that everything in the chain seems intuitively to be good, important or sacred. If a value is something that is good, important or sacred and any “Value Premise” can eventually be broken down to an intuitive sense of its worth labeled as good, important or sacred then it seems that a value of Justice and a “Value of value” are not that different from each other as starting points for a case.

Essentially the criterion tells us why one thing is valuable and another is not. A criterion should give some sort of calculus to determine when something should be called valuable. Whether my value is Justice, or Morality, or Governmental Legitimacy or Value is irrelevant if the criterion I use to support it does not break down how to identify what is and isn't important to us.

### **Case Three: Socialism.**

Suppose finally that a debater got up and presented a value of socialism, evaluated by the criterion of socialism. This of course seems ludicrous and tautological. However given our working definition of a value as something that is good, important or sacred it is not hard to view socialism as a value. There are certain assumptions that compose the idea of socialism that work as the basic values it collapses down to the same as justice. Socialism considers labor and the laborers to be essential. Further, socialism considers those laborers to be good or important so it seems to break down in a similar manner to most other values. In fact, most of the time the implicit values that a criterion takes for granted are no different (when closely examined) than a regular value premise. In this case the value of socialism would be evaluated by the criterion of socialism and I believe, would produce as coherent a result as either of the above two examples.

The fact that the value premise is as malleable as it is seems to suggest that it is necessary for the criterion to pick up the slack. When values are as easily modified and replaceable as they often tend to be a more cut and dried tool is necessary to flesh out the round. I've already acknowledged that two of the above examples probably seem beyond strange but that was of course my point. I do not mean to suggest that it is a good idea for debaters to start going into rounds and claiming that value is their Value Premise or having their criterion and value be the same thing. What I am saying is that the value premise is beginning to become obsolete as far as practical application goes in winning debate rounds. Generally the criterion debate is where a round is won and lost. It seems unlikely to me that I would find myself in a situation where one debater could clearly win a standard in the round and get the most impacts off that standard but lose the round because of something having to do with the value. I hinted early on that I might say that the value premise can be harmful to debate in some cases but I believe now that that was an overstatement. At worst a long, muddled and poorly argued value debate will detract from the more important aspects of the debate round however most of the time the value is as unobtrusive as it is unnecessary.

For most of you it will probably remain necessary to use a value premise in your case for some time now. Keep in mind that just because I think a well developed standard doesn't need a value that doesn't mean it will hurt you to have one. I just wanted to include this section so that I could toss out the idea that perhaps it isn't necessary to have a value in your debate case. Whether or not this is something that will change as debate grows is something I'll be interested to see. Either way keep in mind that you really don't hurt yourself by having a value premise and depending on the standard you use it can even add a good deal of fluidity to the case. For instance if you were using Rawls's theory as your criterion it would probably help the case flow to use a value of justice rather than just jump right in to Rawls's analysis. At any rate if you're interested in shaking things up in your area I think opting for a case with no value is one way to go. Remember, if it doesn't seem like a good idea where you debate now it's really not going to hurt you to have a value. Its necessity is nevertheless, a very interesting issue to ponder and I look forward to hearing responses from value advocates.

Up to this point I've used the words "criterion" and "standard" interchangeably, but I believe that it is necessary to look at another issue that has evolved in debate recently that calls for a differentiation between the two words. A standard is, to me, an evaluative tool that shows us what is important in a given situation. In a debate round, the standard is our evaluative tool that separates arguments according to how applicable and meaningful they are in the round. The point is to take the large amount of

arguments presented in a debate round and condense them into a workable and meaningful whole that leads to the correct decision in the round. The purpose of the standard for the round is to essentially run quality control on the arguments presented, differentiating between sound arguments that ought to impact the judge's decision and abusive, incoherent or superfluous arguments. This summation should come as no surprise to veteran debaters and should hopefully be informative for novices. Where it gets complicated is when we begin to realize that while all criteria are standards, all standards need not be criteria. I believe that criteria are generally expansive theories that dictate what actions should be taken in a multitude of situations. Criteria are larger than the sum of their parts, require a great deal of justification and explanation, and have implications for a large number of situations. A good example of a criterion would be Mill's utilitarianism as it is a rather expansive theory with many claims and warrants that attempts to dictate what is and is not a moral course of action in any situation that is conceivable. A criterion is, of course, a standard because it can be used to show what arguments matter and why. A burden is generally a brief statement that often appeals to intuition and while useful for determining how arguments should be weighed in a specific situation, does attempt to serve the function of an expansive or totally inclusive moral theory.

It has become commonplace in many debate rounds for participants rather than extolling the virtues of a deep and difficult theory to simply say: "The value is justice, two things must be met for justice to be achieved, A and B, those are my standards for the round so if I meet both of them I win." I have done this on many topics. For instance on the topic "Resolved: That violent juvenile offenders should be treated as adults in the criminal justice system" my value was Justice and the discussion of standards read: "There are two essential aspects of criminal justice, the fair determination of guilt, and sentencing decisions that consider the culpability of the offender. These two standards are known as procedural and substantive justice, and serve as the negative criteria". Notice I was at that time using criteria and standard interchangeably as well. This is a good example of standards that are not criteria. The main reasons are first, that neither burden requires substantial explanation; it is an appealing and intuitive idea, and second that the two burdens do not attempt to be broad or highly inclusive moral theories on their own. Ideally a burden should be very specific to the topic that you're debating because specificity is one of the advantages that burdens may have over criteria. Burdens are however not recyclable. It is highly unlikely that the burdens of procedural and substantive justice would be very useful on a topic about nuclear weapons, community gambling laws or anything not having to do with criminal justice. A burden can be thought of a lot like a stock issue in policy, only here debaters claim that if they can meet the burden they set up (rather than an opponent failing to meet it in policy) they should win.

There may be those that believe that it is unjustified to use burdens in a debate round, claiming instead that only thorough and complete criteria will do the job. I think that this is unfortunate because it ignores the fact that burdens work towards the same end as criteria, often as effectively. There are strategic advantages and disadvantages for both, but I believe that it is valid to approach a resolution with either one.

I think given the more established position of criteria in debate it makes sense to begin our comparison of criteria and burdens with them. As I've already said, a criterion is distinguished by its expansive application and complexity. Both of these features can work to a debater's advantage or against it. It can be very useful to understand a particular criterion well because it will never go out of style, it will always be useful. This is not to say that you should use the same criteria or criterion on every topic, but if you understand a particular theory of justice or morality or international ethics you will always have something to fall back on for 90% of the resolutions that are debated. If you're really good at running utilitarianism then you always have an option if your research does not introduce you to a particular topic specific standard that you'd like to use. Understanding more advanced or complicated versions of the same criteria is also advantageous; a novice debater might not have an understanding of utilitarianism that goes far beyond "the greatest good for the greatest number", a more advanced debater might decide



between using J.S. Mill's utilitarianism or Peter Singer's, or perhaps act and rule utility. No matter what feature of debate you look at being more educated is always a plus so don't stop after reading Kant, look at the Cambridge Companion to Kant. Don't just read "On Liberty", look for modern Utilitarians and see how the theory has evolved. This can help compensate for one of the weaknesses of the criterion as compared to the burden; the criterion is often times overly broad. It is difficult to make a full-fledged philosophical theory work out to a standard that can be used to adjudicate a debate round given the relative time constraints of the activity. So debaters who have read a good deal of Peter Singer might consider running the Principal of marginal utility rather than just utilitarianism in order to write a case that is more coherent and workable.

Another advantage of criteria is that they are often difficult to refute. When you keep in mind the fact that these theories are projects that philosophers have labored over for their entire lives it gives you some idea of what is involved in trying to defeat one of them. Indeed the fact that modern philosophers continue to pick up the torch of very old theories shows how impressive and flexible a well-organized and meaningful theory is. It is worth experimenting with various levels of philosophical involvement in your debate cases. On some topics there may be so many good cards that you want to get to in your case that you ignore the need for a thoughtfully developed standard. A good exercise to try might be to devote an abnormally large amount of time to designing a full-fledged criterion that you believe will really support your position on a resolution. If the standard you set up is a good standard, and the only option the standard leaves is voting for you, it's going to be difficult to defeat you. I've only seen this attempted once, and it worked exceedingly well. You don't have to try this at your state tournament or national qualifiers, a practice round will suffice. With any new strategy or technique you try when debating, practice makes perfect; so it makes a great deal of sense to hone your skills debating in front of your teammates rather than a panel of judges. My friend tried devoting extra time to the criterion at debate camp, where the rounds were all practice rounds. He read extensively about one theory on how government should work and spent a great deal of time hashing out how to condense 300 pages of that theory into a debate case. In the end, simply by knowing his criterion inside and out, he defeated one opponent after another in camp practice rounds. He did not lose a single round with a case that spent over three minutes on the criterion, not the value and criterion, the criterion. This is, of course, just another example of how important it is that you understand and use the criterion well. Simply by understanding a theory and explaining how it justifies your position on a topic, you can overcome many obstacles. You will have a much better chance against more experienced and better prepared debaters if you can convince a judge that a certain theory is the best way to approach the problem presented in the resolution while demonstrating how much better your position fits with that criterion than does your opponent's.

It's clear that there are some advantages that come with presenting a well-argued, coherent criterion. There are however, certainly some disadvantages. For one, it takes a lot of time to explain. At least it takes a lot of time to explain a criterion well. One of the disadvantages of a criterion is that it is quite easy to fall into the trap of under-explaining. This can happen many ways. For instance you might assume that you and your judge have a similar amount of knowledge about the theory you're presenting as your criterion. As such you could very likely skip over parts of the analysis that are essential to your opponent's and judge's comprehension of your position. If you do this you open yourself up to a loss against a debater you might otherwise defeat simply because your judge does not understand what you are saying. You can also under-explain by not really developing the theory that you've chosen as a standard, opting instead for catch phrases like "greatest good for the greatest number." This is likely to make your case, and your understanding of it seem trite and superficial. If this is so you may lose to an inferior debater because they've taken the time to explore as well as explain their criterion. The fact is most debaters don't want to devote the amount of time that is necessary to present a well-argued criterion preferring to spend it other places in the case. This is fine if your arguments are that good or that important, or if you don't think that you can find a standard powerful enough to stand-alone as a major part of the case. However if you're thinking of opting for mediocrity in your criterion you need to make

sure that you really have a good reason for it. Many times debaters don't spend enough time on their criterion, but proceed to make arguments that are unnecessary or tangential to the round. Doing this completely wastes the opportunity to present a reasonable standard, since it is not offset by any benefits as a result of the time you've saved.

Another problem that debaters often have is finding a sufficient number of arguments that relate to their criterion. I say this because I've seen many debaters present a reasonable way of weighing the round and then continually go into great detail on arguments that have little if anything to do with their standard. In all likelihood the problem is probably not that debaters cannot find arguments that relate to their criterion, it's that they don't care to, or don't think to. The unfortunate thing about tournaments is that they have to run on time. (Well they have to get over on the day they say they're going to, well they have to try anyway.) What I'm getting at is that we don't have an unlimited amount of time in which to conduct debate rounds and, as a result, the ground debated in any one LD round is certainly not going to be representative of the totality of possible areas for discussion on any given resolution. Although the criterion has many virtues it is also restrictive, often times more than we would like it to be. Because the standards we pick are supposed to separate the arguments that matter from the ones that don't, the unfortunate reality is that some arguments are going to fall into that second category. The quality of an argument itself has nothing to do with how it applies to the round. The fact that a line of argumentation holds water does not mean that it's going to relate to the standards the debaters have chosen. Of course the other side of that coin is that arguments that matter in terms of the round's standards are not necessarily going to be good arguments, yet I digress. The point I'm getting at is that, like it or not, to set up an effective standard by which to weigh a round you're necessarily going to have to leave out some arguments that you'd rather put in your case. You can get around this problem by writing multiple cases, or trying to broaden your criterion although the latter is not likely to happen. Probably your best bet is going to be accepting the fact that not everything can fit into one case.

So the advice I have to give concerning the use of criteria rather than burdens is to make sure to cover all your bases. Read a lot of material before you start constructing your case. Many times debaters don't realize that rounds are won and lost with the criterion because its job is to decide what arguments actually matter. No matter how brilliant the arguments that you make are without a clearly explained relationship to the standards being used in the round they don't do you any good. So if you understand your standard backwards and forwards and can prove that it is indeed the better way to go about viewing the round it might not matter if you can win on the flow because odds are your opponents arguments are a lot less important than yours when evaluated by your standard.

Another thing that debaters often fail to realize is that given the immense power of the criterion an unorthodox approach to it might catch all of the competition off guard. I recounted the experiences of a friend of mine in debate who managed to take unwitting opponents by storm simply by devoting more time than usual to his standard. This is of course not the only way that you could get creative with your standard in a round and there are probably many ways that I've never thought of trying, perhaps even some that you'll find in this book.

Finally it is essential that you be well read should you choose to use a criterion. The fact that the ideas that they tend to deal with are so expansive demands a knowledgeable background in how they should be used. Catch phrase criteria will only work when pitted against other catch phrase criteria. Reading essays by college students that attempt to explain how to debate or how to use a criterion will only take you so far. At some point it is going to be necessary for you to sit down with the material and learn from it what you will.

Now let us turn to burdens. Burdens are easily distinguished from criteria. They are short and can often be summed up in one sentence, and they often do not require substantial justification but rather appeal to

intuition. In addition, it is not uncommon to see someone pick two burdens as standards for the round as I did in the example from the juvenile crime topic. Because the theories behind criteria are so expansive, it would probably not make sense for a debater to attempt to run two criteria in a round. I can think of few, if any, theories, even among philosophers with similar beliefs, that would be close enough to each other that they could both be run in a debate round. In order to get you familiar with burdens, let's look at a few other examples.

On the economic sanctions topic someone who was affirming might set out two burdens that they would have to prove in order to win: that sanctions do not cause unjust harm to innocent citizens and that they do achieve US foreign policy goals. What a debater in this position is saying is that rather than try to look at an expansive theory of morality, for this round, meeting those two conditions would be enough. If sanctions are innocuous and effective they should win.

On the sanctity of life versus quality of life topic I was introduced to the idea of burdens by watching elimination rounds at some big tournaments. Until that point I had not really done much thinking about how criteria should be used, or what was legitimate to run as your criterion. (I'd only been debating for a short time.) I had generally assumed that people should get up and read a criterion of Utilitarianism, or Deontology and move on. I watched a debater stand up to affirm and say that all we needed to know as far as standards went was that it was wrong to coerce or mislead a person to death. The debater went on to spend the rest of his case explaining why negating the resolution would do just that. Quite frankly I was shocked at the time. Rather than justify a theory that I was familiar with, one that I expected to see every few rounds like cost benefit analysis, this debater simply explained why the negation of the resolution would fail one simple test and made a very impressive case by doing so.

A burden is not unlike the litmus tests that the Supreme Court often does on cases that they are evaluating. They don't use a large and expansive theory like Deontology to decide whose claims are more important, they use simple tests, like the clear and present danger test. The justices simply have to decide if a clear and present danger exists, and if a clear and present danger would be sufficient reason to override the rights a citizen would normally be afforded were there not a clear and present danger. This is not only a good way to get you thinking about burdens as standards, but also introduces you to a great source for standards other than philosophers. By reading Supreme Court decisions and responses to them in legal journals, you can get a very good idea of how a lot of people evaluate issues on a certain topic. It is not uncommon for LD debaters to have a topic that has a lot to do with decisions that the Supreme Court has made, and you would do well to look into them as a source.

I hope you now have a good idea of what I mean when I talk about the difference between a burden and a criterion. I think that it's certainly justified to use a burden as your standard in a round because if the principal you propose is reasonable, and you can show how you meet it, you've essentially done the same thing you'd normally do with a criterion. Another thing about the burden is that it tends to narrow the discussion significantly. As I've said before, often times the principal it proposes is simply a matter of intuition that requires little justification. The result of this is that no case arguments are required to justify the standard. Also, when the standard you're using for a round is so specific to the topic you're debating that it can be summed up in one sentence, it's not going to require, or even allow, the large amount of ground that would be created by using a standard like Kantian ethics or Mill's utilitarianism. When using a burden, although you limit yourself, you also simplify your task quite a bit. All you have to do in a round is meet the simple burden that you've set up for yourself. Now that probably isn't any easier than meeting the standard set up by a criterion, but it's less complicated and more straightforward.

For this reason, it might be a good idea for novices to begin by using simple standards rather than trying to run utilitarianism on both sides of each topic. When you come up with one or two burdens that are easy to grasp, you only need a few arguments to set them up and meet them in a novice round. I think

that the frustration that many young debaters feel when trying to understand what the criterion is supposed to do, and how they're supposed to use it could be remedied if they started out using burdens rather than criteria and worked their way up as their understanding of logic and debate increased. I don't believe that criteria are better than burdens or vice versa. I think that they are both legitimate ways of approaching the task of proving one side of a resolution true or false. I do think that a burden tends to be easier to use when you're just starting out. A burden is also probably a better choice on topics that don't seem to lend themselves particularly well to any theories you know of that could serve as criteria. This could often be true on topics that debate hot button issues that are in the news at the same time debaters are in their rounds. While "current event topics" certainly are not devoid of philosophical content it would be difficult for debaters to find much research specific to the topic that related to a criteria or theory.

Using burdens also allows for a lot more argumentation because since they don't have the same expansive application as the theories behind criteria, they tend not to require as much explanation. This doesn't mean that they aren't as true, or make worse standards, just that they're usually easier to grasp. On some topics this might not be sufficient, on others an intuitive burden that takes a minimal amount of time to put in the case might be more than sufficient.

I don't think, given my previous analysis of the value premise, that much needs to be said about it in relation to the differences between burdens and criteria. While there isn't anything wrong with running a Value in either case I don't think that it's necessary. However if you're rather certain that you're going to lose a good deal of rounds in your area because you don't have a value premise by all means use one.

Burdens clearly have some advantages that would be useful for debaters to utilize sometimes. They also have their drawbacks. For one, you really can't reuse burdens the same way that you can criteria. This isn't to say that you should use the same criteria on every topic, only that it works to your advantage when you always have at least one or two theories that you understand and can explain well that you could use as your standard on most any topic. These work to your advantage because you'll presumably never be left out of the loop on a topic without a good understanding of a line of argumentation to run. By mastering a few criteria, you can protect yourself from slumping on a topic that is unfamiliar to you. If you don't do the necessary reading to master some of the great philosophical theories that are often used in LD debate, and instead scramble to design a different standard every time a new resolution comes out, you may have trouble telling a coherent story all of the time. In addition, if you aren't familiar with the criteria that other debaters are running, then you'll have a harder time defeating them if the judge is a big fan of their criterion.

I think that the main thing debaters have to do to avoid the various pitfalls I'm pointing out, is try to get a well rounded debate education. You may never have any desire to run Mill's utilitarianism in a round, but that does not mean that it isn't to your advantage to know as much as you can about the theory. The fact that you don't end up using something in your case does not mean that you aren't going to see it in someone else's and this goes for all kinds of arguments not just criteria and burdens. Remember that not everyone is going to approach the resolution the same way that you're going to, and you need to anticipate the different angles that other debaters are going to bring to topics in order to win lots of rounds.

I think the best approach to the standard would be to take it on a resolution-by-resolution basis. If you debate for a sufficiently long time you're sure to encounter resolutions that would be better served with a long and well explained criterion; you'll also find topics on which you would do well to set out one or two simple principles and spend the bulk of your time on setting out arguments. It may also be primarily a matter of personal preference which one you prefer. In the end, it's up to you to decide how you want to debate and how you want to structure your cases and standards. There is no right or wrong way.

While there is not a wrong way to compose a case, I do think that it's important for me to address an issue that I call the non-criteria. These are would-be standards that I think, do little to evaluate the round. The problem isn't that these standards don't tell you what you ought to do; they just aren't specific enough. Notable culprits include the insipid cost benefit analysis and the would-be criterion of "fulfillment of obligations". They are a gaping hole in cases where the most essential analysis should be. Instead of telling us how we determine what we have an obligation to do, they simply tell us to fulfill our obligations. Conveniently, most people that would run a criterion of "fulfilling obligations" would say that the most important obligation we have to fulfill is to negate/affirm the resolution at hand. This, however, leaves open the question of why it is that we have to affirm or negate that resolution. In essence, one of the things that LD debate attempts to resolve is where are moral obligations come from and what they are. Asserting that we should keep our moral obligations is no more a standard than saying that the judge should vote for the debater that does the better debating. Both choosing the best debater and assessing moral obligations are generalized goals of LD debate; the problem with trying to use those goals as standards is that they themselves need to be assessed by other standards. Essentially they are criteria that need extra criteria.

The reason that "fulfilling obligations" functions so poorly as a standard is that it does not tell anyone what obligations we need to fulfill or how to identify what creates an obligation. This is quite a shortcoming indeed, because that is exactly what the standard is supposed to do. Explaining what our moral obligations are and running a criterion of "fulfilling obligations" are not mutually exclusive; a debater could easily use that as the criterion and then later present a logically sound calculus to identify obligations. The problem with doing that is, if you have to spend time in the case setting up a standard to measure the standard you've presented as a criterion, you're just wasting your time. You'd be better off using whatever argument or syllogism you've devised that explains what fulfilling obligations is as your criterion, and save yourself some time and your opponent and judge a great deal of confusion.

In addition, to falling short of telling us how to identify our obligations, that "standard" does not even pretend to take into question the need for weighing competing obligations. Often obligations, duties and desires conflict; because they often cannot be easily resolved brings us a good deal of debate resolutions too. Most people would agree that the government has a duty both to protect the liberty of their citizens as well as their well-being. This creates problems, however, when an issue like welfare rights or gun control is brought up. On the one hand, we don't want the government to have to intrude on the rights of its citizens, in this case the right to economic autonomy and the right to bear arms. On the other hand, most people do not want their fellow countrymen to starve, and are disturbed by the number of accidental deaths caused by handguns each year. Here we have some cases where most people would like to see both obligations met, but one must be sacrificed for the other. In cases like this, the criterion of "fulfilling obligations" gives us no way of viewing the conflict so that anyone has a better idea of which obligation must come first.

Again, it is not inconceivable that a debater would use this criterion and then go on to extrapolate a coherent interpretation of how to weigh the two competing claims, but this is, at best, a waste of time and, at worst very confusing. Some philosophers have argued that it is not possible for obligations to come into conflict. They say that in any given situation, conflict between two apparent obligations is resolvable and whatever conclusion we come to is where our real obligation lies. Thus while two things might be obligatory in other situations when "obligations" to liberty and equality come into conflict, for example, we resolve the conflict and find the true obligation, so we never have to choose between two things we are obligated to. I think this is an interesting issue to discuss and would like to devote more space to it than I have available in this essay. To briefly respond to that argument, I would contend that resolution of a conflict between "obligations" does not affect their status as obligations, even if one wins out over another in a different situation. Obviously we can't be obligated to do A and B if A and B are mutually exclusive. That does not mean however that we cannot be obligated to do A or B in situations where they

do not conflict with each other. I think that this probably dissolves to a semantics debate and there is little ethical implication whichever side wins. However, I would like to point out that portraying the clash as a conflict of obligations does a good job of capturing the gravity of the conflict. When the two things we are deciding between are both important, as is the case in the examples I've tried to illustrate, it is essential that we keep in mind how pressing both claims are in order to make a well thought out decision. If anything, I think calling it a conflict between obligations reminds us to remain levelheaded when viewing these disputes. Even if obligations do not conflict this does not absolve the flimsy criterion of "adherence to obligations" of its shortcomings as a standard for a debate round. In short it does not tell us anything that we don't already expect when we come into a debate round, and it needs a separate standard just to make it workable.

The other example I often think of for a "criterion" that a lot of debaters use that falls short of actually being a standard for the round, is cost benefit analysis (CBA). Most debaters explain this as calculating our decision by acting to maximize our benefit and minimize our costs. This may sound all right on the surface, but it ends up succumbing to the same criticisms as "fulfilling obligations" because it fails to tell us how to approach and interpret what a cost is and what a benefit is. While it may seem clear to debaters constructing their case what a cost is and what a benefit is, that vision of clarity is often lacking in the judges view of the round. Debaters tend to view the arguments they're making as more compelling than their opponents. This often leaves them blind to the problems that judges have sorting out arguments from two debaters that seem equally compelling. With a criterion like (CBA) which essentially means getting good stuff and avoiding bad stuff it's quite easy for a lot of arguments to get lost in the shuffle because the judge does not know how to weigh those costs and benefits if both debaters are presenting the advantages of voting for them and disadvantages of voting for their opponents. This is another case where the criterion does not tell the judge much they didn't expect, and another standard is needed to get the job done. The judge needs something that can tell them first, what distinguishes a cost from a benefit (e.g. benefits promote individual rights and costs detract from them), and second, how to weigh competing costs and benefits when there is substantial clash in the round.

Many people think that CBA is just like utilitarianism, but this is true if one only looks at the crudest version of the utility theory. It is possible that a very underdeveloped theory of utility would simply say to do good and avoid bad, but most utilitarians have gone much further and more in depth in their writings. Mill for example distinguished between different kinds of happiness and assigned them different values e. Bentham had an actual mathematical calculus for how to weigh different kinds of possible utility taking into account things like the intensity and duration of the happiness or sadness that a certain action would potentially cause. This isn't to say that their theories are perfect, yet they do go much further than Cost Benefit Analysis does in giving both debater and judge something to actually work with when trying to weigh the round.

I would like to see debaters seriously approach their standards with the knowledge that I can give them only by having been on the other side of the ballot. Namely, I'd like today's debaters to know that it is much harder to win rounds when the standards that are being used are muddled or confusing. Simply throwing something out that sounds decently like a standard because you assume you need something to say after your opening quote, is going to do little to help you win rounds. It is not sufficient to ignore the standard and attempt to just win rounds with the arguments 99% of the time. If you feel that you can win every argument on the flow, then perhaps you've taken LD debate further than the standard was designed to go. If not, I implore you to take serious stock of how you're using your criteria or burdens. If you can't win every argument on the flow, you'll be in a lot better shape when the last speech rolls around, if you can get the judge to believe that he/she needs to evaluate the round by your standard and not your opponent's. Otherwise, you're going to have a very difficult time. That's why I believe that it is exceptionally disadvantageous for debaters to use criteria like "Fulfillment of Obligations" or CBA because neither standard really has much to offer a judge as far trying to weigh a close round. You would

probably be better off devoting your time to a workable and coherent standard that you believe you can win and use to your advantage when it comes time to compare the arguments that your're winning versus the arguments your opponent is winning.

Finally, I think that it is necessary to look at another phenomena related to the popularity of burdens over criteria that has come up in recent years in debate. That is choosing burdens over criteria and opting to place them on your opponent rather than yourself. Essentially a debater that is taking this road might say: "This is the standard for the round, should my opponent fail to meet this burden I win". If you refer back to the example I gave from my negative case on the juvenile crime topic some pages ago, you'll see what I'm talking about. I said that for needs of justice to be met, it was necessary to satisfy both procedural and substantive justice or procedural rights and sentencing rights. What this meant was that all I had to do to win the round was show that the affirmative did not meet either (or both) of the standards. The way that works is basically that in order for the affirmative to win they needed to satisfy the burdens that I laid out for them (assuming I justified my standards better than they did theirs); if they failed to meet either standard I won.

I have seen this strategy rise in popularity since I began debating, and I have seen it used both by debaters that were affirming and debaters that were negating. What I hope to explore here is the justification for using such a burden in a round, when it is best to use these kinds of burdens, and whether or not both sides can utilize these types of burdens.

To begin with, it is necessary to cover some basic terms central to the rules of logic in argumentation. What debate is all about hinges on one key statement: the resolution. It is the goal of one debater to prove the resolution true, the goal of the other to prove it false. So far, I have argued for the conclusion that a standard of some kind is almost always essential to realizing the goal of either debater. We've looked at standards that I call criteria that are expansive theories with a broad range of applicability, as well as burdens which are short statements that sum up what you have to prove, are often intuitive and tend to require little justification. Both of these types of standards have been explained with the implicit assumption that you are placing the burden of proof on yourself when you use them. When you choose either of the aforementioned standards you are trying to justify them and then meet them in order to win. We've also looked at another kind of standard which I would like to now officially introduce as the "opponent's burden" standard. It is necessary to nail down what is meant by a burden that you place on your opponent. It is a standard for the round, justified like any other one, the only difference is that you claim it is the obligation of your opponent to meet that standard and that should they fail to do so you win. What you are claiming is that the conditions that need to be met in order for Justice, or Morality or whatever to be a achieved are delineated in your standard, and that if those conditions are not met then Justice or Morality or whatever has not been "achieved" in that round. I regret to revert to terms and concepts that I've argued against using, but I think that the preceding explanation is one of the simplest and is aided by the use of such previously discussed terms. In essence, what the "Opponent's Burden" standard does (whether or not you have a value) is set up a standard for the round with the implication being that you will lose if and only if your opponent proves they meet that standard.

On the juvenile crime topic, my two burdens in my negative case were examples of "Opponent's Burden" standards. My claim was that both procedural and substantive justice were necessary parts of treating juvenile offenders fairly. Should affirming the resolution fail either standard, it would become necessary to negate. After setting out both standards, I laid out two contentions, each one explaining how one of the standards was in tension with an affirmation of the resolution. Given this structure, if the judge accepted those burdens as the standards for the round and agreed that the affirmative failed either one of them I was home free. This approach to debating standards in rounds is rather straightforward and simple; the trouble comes when it becomes necessary to decide who can use these standards.

I believe that because of the structure of LD debate resolutions, it is legitimate for the negative to place standards on their opponent, but not legitimate for the affirmative to do the same. This could quite possibly be controversial in many debate circles and I will spend a substantial amount of time on the justification for this claim.

One thing that distinguishes LD debate from Policy is that there are no stock issues or burdens of proof. In policy it is generally assumed that the negative has presumption over the affirmative because the status quo (the way things are now) is presumed to be acceptable. Unless the affirmative can prove that there is a substantial problem with the status quo that could be fixed by a proposed change in policy, the negative will be victorious. It should be noted, however, that the tides have begun to turn against the idea of presumption in some circles of policy debate. At any rate, most judges do not believe that presumption goes to the negative debater in an LD round. The general consensus is that both debaters have the burden of proof. There are some that argue that the affirmative has the “burden of proof” and the negative the “burden of clash”. I still to this day cannot find a reasonable interpretation of the “burden of clash”. Most debaters seem to use it to suggest that the negative should lose if they do not “clash” with their opponent and defend a different set of ground. Maybe it’s just me, but it’s always seemed like a good idea to disagree (or clash) with your opponent on a good number of issues in the round because failing to do so and simply agreeing with them is generally poor for the Win/Loss record. At any rate, I will stop beating around the bush and just get to my claim about how “opponent’s burden” standards play into debate theory.

I think that it is legitimate for the negative debater to disprove the resolution by setting out one or more “opponent’s burden” standards and demonstrating why the affirmative cannot fulfill the demands of those burdens. I do not think that it is acceptable for the affirmative to do this. The reasoning has a great deal to do with how we word debate resolutions. The affirmative always has the job of defending the integrity of the resolution and proving that it is, indeed, a factual statement. The negative’s job then, is to disprove the validity of the resolution. Webster’s defines the negation of something as disproving its truth or existence. That seems to be the job that the negative takes in an LD resolution. This may not be the most popular viewpoint, but I believe that it is the most logically coherent.

To understand why this is the best view of the duties of debaters on either side, it’s necessary to go into a short discussion on the rules of logic. Familiarize yourself with these two terms: necessary condition and sufficient condition. In this case we are looking at what is and is not a necessary or sufficient condition for proving a resolution true. A necessary condition is something that is essential or irreplaceable for proving or justifying something, like a debate resolution but it alone does not prove a debate resolution. If a sufficient condition has been met the resolution has been proven. Necessary and sufficient conditions come up in all kinds of other areas, too, like political debates and public policy. It is important to remember that all sufficient conditions are also necessary conditions, but that not all necessary conditions will be sufficient conditions. As I said what makes a necessary condition necessary is that it is essential to proving or justifying something. A necessary condition of a just society might be murders are jailed. It is not hard to argue that justice cannot exist if people are not put away for such a heinous crime. However, this is probably not the only condition that is necessary for justice, and there could be very many. Another condition that is probably essential to justice is that murders spend more time in prison than petty thieves. Most people would agree that people that commit more serious crimes should be dealt with more harshly. Meeting those two things would probably not be enough to ensure justice for all either. A sufficient condition in this case would be something that ensures that justice is met. In my case on the juvenile crime topic a sufficient condition would be reached if both procedural and substantive justice burdens were met, as those were the two aspects that I said defined criminal justice. There are, of course, other things that go on in the criminal justice system like the treatment of inmates once they’re in prison, but as far as ground that I actually think was reasonable to talk about on that topic I believe having conditions of procedural and substantive justice met would be enough to be called sufficient conditions. I



hope the distinction between a necessary and sufficient condition is becoming clear to you now. While necessary conditions have to be present to ensure the desired result their presence does not guarantee the desired result. For example, though it is necessary to have an umpire present in order to have a baseball game, the mere presence of an umpire at a baseball diamond does not ensure that a game will occur if there are no players or bats or gloves. However, everything necessary for a baseball game gathered together on the field would form a sufficient condition for a ball game. Sufficient conditions are often made up of smaller necessary conditions.

Criteria (as opposed to burdens) also act as sufficient conditions since most of them tend to set out all encompassing theories of what some principle (justice or morality etc) is. If all the specifications of Mill's theory of utility were met, then Mill would say that justice had been achieved and a sufficient standard for justice will have been met.

Essentially what setting out "opponents burden's" standards does, is say that something is a necessary condition for a certain decision in a debate round, and then claims that such a standard cannot be met by the opposing debater. From the negative perspective, these standards say that the affirmative must prove they meet such and such necessary conditions in order to win. It does not matter if the debater sets out enough necessary conditions to create a sufficient one, so long as the burdens he/she is placing on his/her opponent are necessary for a decision to be rendered in their opponent's favor then that burden is a standard their opponent must meet.

The reason that I don't believe that affirmatives may place burdens on their opponents and then claim victory should they fail to meet those burdens is because resolutions are stated such that the affirmative has no choice but to try and prove the resolution true. Since negating something is disproving its truth, I believe that all the negative has to do is show a shortcoming of the affirmative position that is severe enough that voting for them would be wrong. Suppose a friend of mine and I were having a disagreement about whether or not Socrates was Alexander the Great's tutor, and for the sake of argument let us assume that we enter this discussion with the knowledge that Alexander the Great had only one tutor in his life. My friend is trying to prove to me that Alexander the Great was indeed taught at the hands of Socrates and is pointing out parallels in the ideas of Socrates and Alexander the Great as evidence. There are several ways that I could go about trying to disprove my friend's claim. It is possible, but not necessary, for me to prove that, in fact, Aristotle tutored Alexander the Great, which given that he only had one tutor (or so we assume to strengthen the example) would make my friend's claim impossible. However, if I simply provided historical data that showed that Socrates died before Alexander the Great was born I would have rebutted my friend's claim equally well. This is because a necessary condition (although not a sufficient condition) of the theory that Socrates tutored Alexander the Great is that they were both alive at the same time. If they were not alive at the same time, then it is not possible that they had any contact at all, much less a pupil/tutor relationship. This is sound because I am only trying to disprove my friend's claim; I'm not trying to prove anything of my own. My friend could not take the same sort of argumentative strategy because he is trying to prove something. He could try to place a burden on me by saying: "Records of births and deaths were spotty back then and mistakes could have been made so you can't prove that Socrates and Alexander the Great did not live in the same time period: therefore Socrates was Alexander the Great's tutor". That statement is incoherent because rebuffing a potential problem with my claim does nothing to actually prove his/hers.

This is not unfair in a debate round as Affirmatives and Negatives deal with different conditions all the time. The Affirmative gets the first and last word while the Negative is often thought to have the time advantage due to the brevity of the 1AR and the fact that the negative gets the longer speeches. I don't think that it makes sense to bend to rules of logic in an attempt to create parity in debate rounds. It is logically sound for negatives to point out a necessary condition that the affirmative fails, although that certainly is not the only way for the negative to win the round. Just like I could prove that Aristotle was

actually the tutor of Alexander the Great in order to win my argument, negatives can set up a criterion or burden that they have to meet and go about proving that they can fulfill that standard (so long as their standard and the affirmative standard are mutually exclusive). The Negative could also accept the Affirmative standard and show how that standard demands a negative ballot.

I believe that the “Opponent’s Burden” method of negation is a viable option and a good strategy once you’ve mastered the basic dictates of logic that are necessary to understand how to use it. I don’t believe that the standard has any particular advantage over any other method of negating a resolution, however.

I hope that this brief introduction to the criterion has been informative. I also hope that the discussion of issues that relate to the development of debate spark the interest and minds of young debaters that are eager to change debate in the area they live in. I know that my analysis was not exhaustive in some places but I hope that nevertheless, it helps you along the way to becoming a better debater. As with anything the more you practice the better you’ll get, and I hope that the issues I discussed here will spark some new ideas for different and interesting ways to debate.

## LD Debate as “Criteria” Debate

by James Scott

### Introduction: Why Buying a Computer is Just Like Debating

When I graduated from high school, I didn't have a computer of my own. My parents realized that I'd need one in college, so we spoke about the issue and decided that a new computer would make a good graduation gift. I then started pouring over the mail-order catalogs, perusing all the new models from various companies, gawking at the wonderful new bells and whistles, and wincing at the price tags. In a short time, my head was swimming in techno babble.

Of course, I was searching for the computer that would best suit my needs and my price range. That was a pretty nebulous goal, though, so to alleviate the confusion I decided to sit down with pencil and paper and to write down exactly what I was looking for. The most important question I had to resolve was whether I wanted to purchase a Macintosh or a PC. After some thinking I came up with three things that I felt were the most important in my decision: performance, price, and extra features. The first two were pretty easy to quantify. There were processor speeds, amounts of RAM, hard drive sizes, and dollar signs to compare. The third was bit tougher: did I consider a CD burner or a DVD drive to be more important? Finally, after some research and some comparison shopping, I picked the model that suited me best- a G4 Macintosh - at a good price.

My computer shopping exploits might not seem relevant to a handbook on the use of criteria in Lincoln-Douglas debate. But bear with me for a moment as we consider my decision-making process. First, I had a question of importance to answer: should I buy a PC or a Mac? Secondly, I had one overriding goal guiding my all my thoughts about the matter: to find the best computer for my needs. Third, I had specific standards to make my goal of "buying a good computer" easier to understand: performance, price, and features. Finally, I had facts and figures about each computer model to determine which ones best met those standards. These four components of my decision correspond to the resolution, value, criteria, and contentions (respectively) in a typical LD round - in other words, the four most important parts of any debate.

I've had many novices ask me why they even need to structure their cases in the way I show them, with values, criteria, and arguments. The reason is that the judge of a debate is a decision-maker. All decisions are motivated by a principle worthy of pursuit (a value), focused by specific standards that help make sense of the value (criteria), and made by comparing the reasons to take each course of action in terms of those standards. The decision by a judge to affirm or negate a resolution is no different, so neither is the thought process.

That's the ideal situation, of course, and the central importance of a value to the decision-making process explains why Lincoln-Douglas debate also goes by the name "value debate." However, considering the way LD is done today, that's a misnomer - values have become almost meaningless except as a formality. The overwhelming trend, at least on the national circuit, is toward extremely generic values like justice, morality, or governmental legitimacy. In my experience, more often than not two debaters will value the same thing on opposite sides of the resolution, especially when the topic's wording lends itself to a specific value. I personally can't remember the last topic on which I used a different value in my affirmative and negative cases. For example, take the November/December topic from 1999: The use of economic sanctions to achieve U.S. foreign policy goals is moral. It only makes sense to value morality - any other choice would require an additional step of explaining why your value premise upholds morality, and is therefore nothing beyond an unnecessary burden. Another example is a resolution that only weirdo

Texans like me (we have this thing called the UIL) had to debate: Influence of the media undermines justice in American criminal proceedings. A value other than justice doesn't make any sense.

The point is, since (virtually) everyone ran a value of morality on the former resolution and justice on the latter, there weren't too many debates about the value. Regardless of whether or not this practice makes for good debate - and there are certainly some who believe it does not; we'll get to those arguments later - it's the standard method of handling values among top-flight debaters. Of course, it doesn't have to be this way, and we'll certainly delve into some alternative ways to use value and criteria a bit later on. For now, however, we'll concentrate on the standard model because it's the one you're most likely to encounter in your debate career. Are values truly meaningless under this standard model? Not completely - they still serve a purpose in focusing rounds onto specific issues, and they're useful for excluding irrelevant arguments. Values aren't nearly so important, however, as many LD purists would have you think, and they're certainly not as important as criteria.

Where does all this leave the judge? If two debaters are both valuing the same thing, and are both persuasively arguing that their side best upholds the precepts of that value, how is one to adjudicate the round and declare a winner? The famous metaphor that debate coaches love to apply to that situation is "two dark ships passing in the night;" both are merely doing their own thing and not interacting with each other. When the value debate is either nonexistent, mutually agreed upon, or inconsequential to the round, criteria emerge as the only way for the judge to distinguish between the principles upheld by either side. In other words, the concept of clash is all about the criteria debate.

### **What are Criteria?**

I'm sure it's possible that you've read the above example about computer shopping and are still a little hazy on what criteria are. There's certainly nothing wrong with that, so before I go any further, it's time to clear up any lingering tidbits of misunderstanding. A criterion (the singular form of criteria) is just a standard of measurement for a particular concept or thing. Criteria come in at least two forms; let's call them the "sliding scale" and the "checklist." Sliding scale criteria are used to measure things where there is some sort of quantifiable relationship between the item being measured and the standard of measurement. For example, one criterion for heat is degrees centigrade. Another possible criterion is the amount of pain caused by the burn when you touch something hot. One can easily argue for the superiority of one criterion over the other: The pain criterion is easier to measure, but it hurts a whole lot. The "degrees centigrade" criterion is more exact and doesn't hurt, but requires you to lay out some cash to buy a thermometer. If you want to find out how hot a barbecue grill is because you like your steaks well done, you first have to decide how you are going to measure heat. (Other examples of sliding scale criteria: we measure wealth by money, acidity by pH, and good sports teams by the number of victories they have in a season.)

Many other criteria are of what I call the "checklist" type. For instance, how does the legal system measure criminal culpability? First, the prosecution must prove *actus reus* - a Latin term that basically means "the physical commission of an illegal act." Secondly, there must also be *mens rea* - which, more or less, means that the accused was capable of forming criminal intent when he committed the crime. To these two standards we might add a third: the prosecution must prove these things without trampling upon the procedural rights of the accused. If the judge and jury are able to check off all three of these items on their metaphorical list, then the defendant is deemed criminally culpable for his actions. If any of the three is missing, then he walks. My computer shopping experience also provides an example of checklist criteria: a good computer had to have good performance (1) and cool features (2) at a low price (3). I wouldn't have bought one that lacked any of the three.

## Necessary vs. Sufficient

Criteria can be necessary, sufficient, or both. This distinction is absolutely essential to LD strategy. A necessary criterion must be met in order to have justice, morality, social welfare, or whatever your value may be. However, it might not be quite enough to meet the value. For example, "not killing people" is certainly a necessary criterion for morality, because if I murder some one, I'm no longer moral. However, I could go through my entire life without killing anyone, yet I still could have done a million other immoral things, like sacking peasant villages or bribing pit bosses in Las Vegas casinos. So just because I don't kill people doesn't automatically make me moral. It is therefore said to be a necessary, but not sufficient, condition for morality.

However, a sufficient criterion for morality (or justice, or whatever) might pose a much higher burden than is needed. Following in the footsteps of Mother Teresa is definitely a sufficient condition for morality (unless she and Dubya partied down in their younger days and I don't know about it). But it's not really necessary to bathe lepers if I want to brag about my high moral standing at the next office cocktail party. I can still be moral by meeting a much less strenuous burden. So this criterion is said to be sufficient, but not necessary.

To put things a bit differently, necessary criteria say, "If you don't have the criteria, then you don't have the value." Sufficient criteria say, "If you do have the criteria, then you do have the value." Necessary and sufficient criteria say, "If and only if you have the criteria, then you have the value." That's obviously the best kind of criterion, because there's no room for your opponent to wiggle on it. However, a specific criterion or set of criteria that is both necessary AND sufficient is a true jewel; it's very tough to find one for abstract concepts like morality or justice. Almost the only way you can do it is to make the criteria just as nebulous as the original value (like "giving each person his or her due" for justice or "good intent and desirable ends" for morality). Since that serves no useful purpose, probably the best you can do is to use necessary criteria that are close to being sufficient. Even that takes quite a bit of thought, and it's one of the most important skills you can have if you want to be a solid casewriter.

## How do I choose criteria?

That's really two different questions. The first asks if there are any general principles that should guide your criteria selection on most topics. The second asks if there's a good procedure for finding topic-specific criteria. The answer to both is yes.

As to the first question: there are most definitely some good strategies to use in picking criteria, but the advice is different depending on what kind of resolution you're dealing with. The first type of resolution merely asserts that something is (un)just or (im)moral. The possession of nuclear weapons is immoral. Human genetic engineering is morally justified. The use of economic sanctions to achieve U.S. foreign policy goals is moral. All are examples of this type of resolution. If you've debated a topic like this before, you'll know that it's generally a lot easier to prove something immoral or unjust than it is to prove the same thing to be moral or just. That fact should always guide your criteria selection.

First, there is the "pro" side, i.e. the side that argues that the object in question is just or moral. This is usually the affirmative, although that wasn't the case on the nuclear weapons topic. On the pro side, you should only use more than one criterion under very rare circumstances. After all, each additional criterion in your case is another burden you have to meet in order to win. Why give yourself two burdens when one will suffice? Let's take the human genetic engineering topic from above as an example. On the affirmative, there were two good arguments: human genetic engineering will cure diseases and stop human suffering, and it will give greater reproductive choice to parents. I'm sure it was tempting on the affirmative to run a value of morality with dual criteria: first, actions that reduce human suffering are

moral, and second, actions that foster reproductive choice are moral. But that would only make the aff's job harder; if he ended up winning the argument about suffering, but losing the argument about reproductive choice, the judge would have to vote negative because the affirmative placed the burden upon himself that he HAD to foster reproductive choice in order to be moral. Since the stronger argument is undoubtedly the one about the reduction of suffering, it would be smarter to use only that as an affirmative criterion for morality. That gives you one and only one burden, and thus really only one issue you should feel compelled to address from your case in every speech. That doesn't mean you shouldn't use the argument about reproductive choice, because it's still a good one, and I'm generally not in the habit of suggesting that people pretend good arguments don't exist. Instead of elevating it to the status of a criterion, however, use it in your case as a pre-emption against potential negative arguments about choice or freedom. Or save it for your 1AR in case those arguments crop up. Either way is fine, but just don't place an unnecessary burden upon yourself by requiring the judge to penalize you if you don't win the argument.

On the "con" side, usually but not always the negative, you'll be arguing that something is either unjust or immoral. Here it is to your advantage to place more burdens upon the value, because your opponent is the one who has to meet them. So I would recommend using two criteria (of the "checklist" variety, to be more specific). Don't even bother in an attempt to find criteria that are both necessary and sufficient. Just pick your two best-developed arguments, use them as contentions 1 and 2, and choose reasonable criteria that fit those contentions. Moreover, it's best to phrase those criteria negatively rather than positively. Huh? Well, that means instead of saying "it is just/moral to do p and q," say "it is unjust/immoral to do x and y." I'm sure that's a little confusing, but hopefully another example will clear it up. On "Resolved: The use of economic sanctions to achieve U.S. foreign policy goals is moral," I thought that there were two clear-cut arguments that were the best for negatives to run. First, economic sanctions kill innocent people. Secondly, they are counterproductive. A good negative case incorporating these arguments would then have the obvious value premise of morality, and two criteria: actions that harm innocent people are immoral, and actions that are counterproductive to their stated goals are immoral.

There are two reasons to phrase your criteria negatively in this fashion. First, most important moral commands come in the form of "thou shalt not" (steal, kill, commit adultery, etc.) rather than "thou shalt" (honor thy mother and thy father? Yeah, right). It just makes sense to adopt the common phrasing of moral commands. Second, remember from a little while ago that necessary criteria come in the form "If you don't have the criteria, then you don't have the value." Therefore, when phrased negatively, the judge will never mistake necessary criteria for criteria that purport to be both necessary and sufficient. Clarity is always an admirable goal.

But why even bother to have two criteria in the first place? The answer is, because it's always smart to hedge your bets (a mutual fund manager would call it "diversifying your portfolio"). Since you're the on the con side, you only have to win on one of the two criteria and its associated contention in order to carry the round. Your opponent has to defeat both of them. This gives you the option of perhaps kicking out of (i.e. purposefully dropping) one of the contentions late in the round if your opponent is hammering you on one but failing to cover the other one adequately. You then have more options and a favorable time allocation scenario - both strategically advantageous.

The second most common type of resolution is comparative: "When in conflict, global concerns ought to be valued above conflicting national concerns (September/October 1997)," or "Capitalism is superior to socialism as a means of achieving economic justice (Nationals, 1999)." My one piece of advice on comparative topics is to avoid unnecessary burdens on both sides, which inevitably means a single criterion for both aff and neg. This advice isn't set in stone, and there may be a compelling reason not to follow it on some specific resolution. Nonetheless, each side has its own principle to uphold, and unlike

before, merely hosing the other side's principle isn't going to be enough to win the round. So in general, choose a single criterion that just rocks your world.

Keeping in mind those general principles that should guide your criteria selection, let's address the second question: how do I choose topic-specific criteria? Well, a lesson on choosing criteria is really a lesson on case construction, because everything in your case should impact in terms of your criteria. I don't have to remind you that your goal in writing a case is to give yourself the best chance possible to win the rounds you debate with it. With that in mind, I'd recommend the following procedure for writing the strongest cases.

First, brainstorm on your own for a bit. Think of any arguments you can on both sides of the resolution without any filter between your brain and your paper (or your computer screen). Then hit the books. Go to a good university library if one is available for your use; if it's a legal topic do some searches on Lexis-Nexis. Read, read, read. Find out what positions the experts in the field are arguing, and try to reconcile their arguments with the ones you came up with in your brainstorming session. Now it's time to do some culling: pick out what you think are the two or three (I always preferred two) best positions on each side, and form them into preliminary contentions. Keep the other arguments, because they might be useful as preemptions or as rebuttal gems.

Only now is it time to think about your value and criteria. Picking a value is easy; often the resolution will tell you what to value, and if not, your value will merely be the overriding principle that connects the major positions you've culled. Don't feel bad for using something generic like justice or morality; just make up for your value's nebulousness with specific criteria. Once you have a value, the hardest part of writing a case is picking a criterion or set of criteria (that's why you save it for last). Try to find some strand that connects your contentions together and makes sense as a standard of measurement for your value. If you can't do that (and often this will be the case), temporarily discard your weaker position and pick a criterion that fits the other one. If the other position can't be retrofitted to that criterion, then save it for rebuttals like your other discarded arguments, focusing your entire case on your best position. Alternatively, if you're on the con side of a declarative resolution (see above), feel free to keep both positions and use two necessary criteria in a "checkbox" fashion, even if they don't have much to do with each other.

### **More on the Importance of Criteria**

I've already said that criteria are so important because they are often the only way to distinguish between two competing positions. Now let's put that point into action. Imagine a simplified round on "Resolved: violent juvenile offenders ought to be treated as adults in the criminal justice system." The affirmative has a value of justice and three arguments:

1. Juveniles have the same cognitive capacities as adults and thus ought to be punished just as severely.
2. Punishing violent juveniles harshly will save lives by preventing dangerous criminals from getting back out onto the streets.
3. Punishing underage criminals in a separate system unfairly stigmatizes young people as being less responsible or competent than adults.

Meanwhile, the negative also has chosen a value of justice, along with the following three arguments:

1. Juveniles aren't fully developed mentally and emotionally and should not be punished as severely as fully competent adults.
2. Putting violent juveniles in adult prisons threatens society because it will only make them hardened criminals when they are eventually released.
3. Incarcerating juveniles with adults is cruel and unusual because they are more likely to be raped and beaten by older, stronger prisoners.

These are all good arguments. They can't all be true, of course - the aff's and neg's first arguments directly contradict each other, and the neg's 2nd argument about prisons only hardening the offenders can't be true if the aff's 2nd argument about saving lives is right. However, there's no way to compare the arguments about societal protection with the arguments about juveniles' mental capacities; the former assumes a utilitarian (or ends-based) framework, the latter a deontological (means-based) one, and those two standards are plainly irreconcilable. Check out the section on morality for clarification if you're still not sure about those two terms. In any event, this is one of those cases I mentioned above where it will be impossible to find a single criterion that fits both major positions.

The point is that one debater or another needs to argue for a standard of justice that makes one of the two arguments irrelevant. It bears repeating here that it's usually best to choose criteria that make your strongest arguments the most relevant. For example, if the affirmative is particularly confident in his psychological evidence about the mental constitution of adolescents, he might pick a criterion like "Justice requires similar treatment for offenders with similar cognitive abilities." Because the negative might also be confident in his arguments about juvenile's developmental deficiencies, he might choose to accept that criterion with a simple corollary: if two offenders have relevant differences, it would be unjust to treat them the same. If, however, the negative feels more confident about the societal protection arguments, he might choose a criterion like "policies that unnecessarily threaten people's safety are unjust." (By the way, in case you haven't noticed already, I think it's usually best to phrase your criteria as complete sentences.)

Let's assume that the negative disagreed and offered the alternative criterion for justice about societal protection. From here on, the debate proceeds on two different levels. First, the debaters will be arguing over which criterion ought to be used to measure justice. Secondly, they will also argue that they each better meet their own criterion. If they're smart and want to hedge their bets again, they will also argue that they each better meet their opponent's criterion, even though it's flawed - but we'll get to that later in the section on rebuttal strategy.

The judge now has a concrete way to decide the round. No longer is he merely confronted with six independent arguments and no way to tell which of them are important and which are not. That's a position you never, ever want to put your judge in. Instead, because the debaters are arguing about standards, the judge must only answer three simple questions. First, which standard (criterion) will he use to measure the value? Second, which arguments does this standard allow him to discard, and which are still relevant? Finally, taking into account all the arguments left on the flow relevant to the decided-upon criterion, which side better meets the standard? By the way, since this is how the judge will be thinking when he fills out the ballot, answering those three questions for him makes for a great way to organize your 2AR or the last couple minutes of the NR.

Let's continue on with our example round to get an idea of how that process works. Let's say that the judge feels the affirmative won the criteria debate, so now the standard to be used for justice will be the aff's criterion of giving similar treatment to similarly constituted offenders. This allows the judge to throw out all the arguments about societal protection, because they have no bearing upon the question of



whether or not juveniles and adults share relevant cognitive capabilities. It also means the aff's third argument and the neg's third argument must be discarded, for neither one impacts in terms of the criterion either. In fact, since the criteria debate was about similar treatment for similar offenders vs. societal protection, and since neither of these arguments matters to either one of those criteria, then they both probably should have been kicked after the constructives. Any time spent trying to win these arguments is time wasted, and you just can't afford to do that in, for example, a four-minute 1AR.

Finally, we'll say that the judge thought the negative's argument that juveniles were underdeveloped compared to adults successfully rebutted the affirmative's position that the two groups of people were fundamentally the same. That means the negative wins the round. Even though he didn't win the criteria debate, his arguments under the affirmative's criterion were still enough to beat the aff on his own turf.

### **A Brief Intermezzo**

Now you know what criteria are, why they are important, and how arguments about criteria ought to play out in the round. There are a few more advanced topics to cover in order to complete your knowledge of criteria: fitting your rebuttal strategy around criteria, alternative interpretations of values and criteria, and criteria abuse. So on to...

### **Rebuttal Strategy: Affirmative**

The 1AR is hell - but you knew that already. You've got four minutes to cover everything the negative just said in seven, so it's absolutely essential that you begin carving out your territory for the 2AR. You've got to make a couple of critical decisions during prep time that are either going to win or lose the round for you. First, determine if there's even any debate about what criterion to use to evaluate the round. Sometimes there won't be; if that's the case those should be the first words out of your mouth in the 1AR because from that point on there will be no doubt in the judge's mind how he is to decide upon a winner. If there's no criteria debate, it means you can "trim the fat" by ignoring everything on the flow that doesn't have any impact in terms of the criterion you and your opponent have agreed to use. This makes your 1AR job a lot easier.

If there is still a criteria debate raging, one of five different things will be true about it. Let's take it case by case. By the way, all of this advice applies to the negative and the beginning of the NR as well.

The first and most desirable scenario is that you have the criteria debate won outright because of some massive drops the negative made during the NC. Again, that should be the first thing you point out in the 1AR, which then allows you to ignore arguments that don't matter in terms of your criterion. That's pretty bold, though, so before you do that make sure you've got your opponent dead to rights.

Second, there aren't any massive drops, but you're pretty sure you've got the criteria debate won. Maybe your opponent just had no justification for his alternative criterion. Maybe your arguments are just amazing. Regardless of why, this situation calls for a 1AR that begins by pointing out why you think you're winning the criteria debate (do you sense a pattern here, that the first thing the 1AR should do is resolve issues surrounding the standard of evaluation the judge is to use? Good.). Then proceed by focusing much more on the arguments that matter under your criterion. However, don't totally ignore the arguments that matter under your opponent's criterion this time. If it's a worst-case scenario and your opponent is able to win the criteria debate after all, you don't want to be left without a leg to stand on. This strategy is called "ballparking" (because you deal with the arguments in your ballpark).

Third, the criteria debate is totally up in the air and could go either way by the end of the round. Again, start off by doing your best to persuade the judge to accept the standard that you're offering instead of

your opponents. Spend some time on this, because it's very important. Then you'll just have to cover everything. You can't run the risk of ignoring or even downplaying the arguments in your opponent's ballpark, because there's an even chance that you'll lose the criteria debate and give him a slam-dunk victory. These kinds of 1ARs are undoubtedly the toughest.

Fourth, you're not sure, but you think you're going to lose the criteria debate. Begin the 1AR by trying to resurrect your position, and still spend some significant chunk of time on the arguments that matter under your criterion. But don't spend all your time there; it's better to play the odds and begin focusing the debate onto why you can still win even under the criterion your opponent is offering.

Fifth and finally, your side of the criteria debate is dead in the water (again, for whatever reason: maybe you got nailed in CX). Desperate times call for desperate measures, so now it's time to ditch your criterion and embrace your opponent's. Focus all your time and energy on proving why you still win when the judge uses that standard to evaluate the round. It's an uphill battle since you're fighting entirely on foreign turf, but it's very possible to still pull off the victory.

The 2AR is the time to seal the deal. Continuing with one of the above strategies, answer these three questions for the judge: what standard should he use to evaluate the round? What arguments are still relevant to that standard? Who wins those arguments? (Hopefully the answers are: yours, yours, and you). Many coaches stress the importance of having "voting issues" in the late rebuttals. Under this kind of rebuttal organization, then, each voting issue corresponds to an independent answer to the third question. In other words, answer the first two questions for the judge, then present your voting issues: "I win under the voting standard for reasons X, Y, and Z."

If the negative still has a chance of winning the criteria debate after the NR, then it's also important to add a caveat to your 2AR. Call it an insurance policy. After you've presented your voting issues, it's important that you have some time left to explain that even if the judge accepts the negative's criterion and wants to use it to evaluate the round, then the affirmative still ought to win for reasons A, B, and C. So your rebuttal sounds like, "I win the criteria debate. I win the arguments relating to my criteria, so I win the round. But even if you think the neg won the criteria debate, I will win the arguments relating to his criterion, so I still win the round."

### **Rebuttal Strategy: Negative**

This is a shorter section because a lot of what I've already said applies to the negative. However, the NR is unique because you have to both go line-by-line down the flow and crystallize the round for the judge in the same speech... something the affirmative doesn't have to do. That means you have to hit the ground running in the NR. Unlike in the 1AR, don't give an overview explaining why you've won the criteria debate... save that for later in the speech. Instead, go straight down the flow, making sure to hit the arguments that actually affect the criteria debate. You'll also have to make the same kind of decision I outlined above for the 1AR. Decide who's most likely to win the criteria debate and play the probabilities, focusing your time on the arguments that matter under the appropriate criterion. Once you've gone line-by-line, you'll have to perform a condensed version of the 2AR. Tell the judge who's won the criteria debate, what arguments can now be discarded, and why you win the arguments that are left over.

To recapitulate: the rebuttals (and LD in general) are all about arguing a standard of evaluation and winning it. Every word that comes from your mouth in the round either contributes to that goal, or is irrelevant to that goal and should therefore not be said.

**An Alternative Interpretation to the Standard Value/Criteria Framework**

I'm not going to take sides here; I seek only to present dispassionately one alternative to the way things are normally done.

There's a strong contingent of people who hate it when debaters run generic values and criteria that are specific to their side of the resolution. They feel instead as if the values ought to be side-specific and the criterion ought to be general enough to work on both sides of the resolution (not the other way around, as it is normally practiced). For example, consider "Resolved: a just social order ought to place the principle of equality above that of liberty." Mainstream LD doctrine would say the most logical value is justice on both affirmative and negative. Others feel that the affirmative is compelled to value equality, the negative to value liberty, and both to agree upon the criterion of "providing for a just social order." It may seem like this is merely a case of one camp calling a value what the other camp calls a criterion, but the rift runs deeper than that. One camp, the one I've been describing in this entire section, believes that a criterion is a standard of measurement for a value. The other side, the one I just explained, believes that a criterion is a standard of measurement for the round (in other words, a burden that each debater must meet a priori in order to win the round. There's a difference there that's much more fundamental than mere nomenclature.

There's no right or wrong answer in this dispute. Make your own decision about which side to agree with; if there's anything debate ought to teach, it's independent thinking. I defend my decision to present the theory and strategy common to only one of the sides on the grounds of its commonality, and on the grounds that everything you learn here is easily adaptable to an alternative view on criteria.

**Criteria Abuse**

The following are some examples I've encountered of people abusing criteria. Actually, I don't know whether to call them abuse or stupidity. Please don't ever do these things, and call your opponent on it if one ever tries.

- "My value is justice, and my criterion is affirming the resolution." This is question begging at it's worst... the judge cannot accept that criterion and still possibly vote negative.
- "My value is equity, and my criterion is equitable treatment." That's a circular criterion that provides no useful information about how to measure the value. Criteria have to be more specific than the values they measure, otherwise they might as well not exist.
- "My value is morality, and my criteria are a moral intent and a moral means." Ugh. The criteria are defined in terms of the value, which is focused by the criteria, which are defined by the value... You'll never get out of that circle.

**Conclusion**

While I'm quite sure "criteria debate" won't ever displace "value debate" as LD's alternative moniker, at least you now know the importance of criteria for affirming or negating a proposition of value. I'll leave you with a reminder of my earlier advice that LD is an exercise in decision-making. Use criteria effectively to help the judge make the right decision - a circle around your school code on the ballot.

## The Use of Multiple and Compound Criteria

by Jon Gegenheimer

Arguments among coaches, critics, and students concerning the strategic effectiveness of the use of more than a single criterion have probably persisted since the inception of Lincoln-Douglas debate. The issue of additional burdens assumed by those who opt to employ multiple criteria has recently been a particularly contentious one, and everybody—for pedagogical or strategic reasons—seems to have his own take on the subject. As luck would have it, those who espouse irreconcilable positions seem to be paired against each other round after round.

In this essay, I hope to shed light on this difficult matter. Ironically, my attempt to make sense of this issue has yielded the conclusion that it is far more complicated than most of us realize. There are no easy answers to the ubiquitous questions, “Do I have to win *all* of my criteria, or merely one of them?” and “What happens if I win two of my criteria while my opponent wins three of his?” To appreciate the nuances surrounding the problem is to embark on an exercise of intuition and reasonableness—two virtues that are frequently not represented in contemporary thinking vis-à-vis criteria.

I begin by observing several characteristics of criteria in general; these issues will be fundamental to the development of the explanations of multiple and compound criteria that follow in section II. Finally, section III endorses a complicated but “most true” strategy that combines the various lessons involving multiple and compound criteria. Complementary examples included throughout this essay should ease whatever difficulties you encounter in attempting to make sense of the more complex analysis.

### **I. Standards of Justification: The Function and Problems of the Criterion**

Too often, criteria are explained to students of debate merely as “the means by which a value premise is achieved” or “the weighing standard for the value premise.” Those innocuous descriptions reveal little or nothing about the function of criteria in general discourse and argument, and often imply absurd conclusions like “justice is a function of social welfare.” Ultimately, characterizations of criteria as some instrumental mechanism by which values ordained in abstraction are realized leads to an inappropriate view of LD argumentation as linear: We have all heard debaters proclaim that “my first contention proves my criterion, which leads to my value.”

What do such statements mean in real terms? Is the judge meant to believe that, after accepting a certain policy, incremental steps terminating at a finite, metaphysical good will be reached? The essential irrationality of the ubiquitous acceptance of the value criterion as an intermediary between particular policies/arguments (“contentions”) and goodness (“value premises”) is that this definition rests upon the misguided assumption that policies gradually transcend reality and eventually constitute ultimate value. It is plainly not the case that affirmative action “leads to” societal welfare, which in turn promotes justice. It is infinitely more plausible—although, of course, debatable—that affirmative action is representative of the same virtues endemic to justice itself. That is, perhaps some particular policies are worldly manifestations of the very goods cultures value in abstraction.

The understanding of the value criterion as the value premise applied in-context is critically important to the proper functioning of the criterion in debate rounds. Criteria are not the middle step in a linear progression from argument to value premise; rather, they are mundane, applicable standards of justification. Philosophers and social critics typically opine that political initiatives are justified (or rendered unjust) by their consistencies (or inconsistencies) with certain operative rules of conduct that represent *in reality* society’s abstract normative convictions. Instead of arguing that “criterion X leads to value premise Y,” one should contend that “value premise Y is function of criterion X.”

The upshot of this discussion is that value criteria are not merely abstract re-definitions of value premises that debaters conjure up to occupy what they view as a gaping hole in their cases. The functionally valuable criterion, rather, is one that describes the value premise as a specific rule governing the operation of that value in the context described by the resolution; it is a standard which, once met, properly implies the material representation of the value premise. I suggest that the value criterion should at least be:

- Grounded: The criterion should not be an abstract, amorphous notion like “happiness”. It should be a specific statement about the value premise’s worldly demonstration.
- Prescriptive: Criteria are merely the standards to be met actually for the value premise to be represented in the world. Therefore, criteria should be phrased as operative rules about how agents *should* act given a stated aim (the value premise).
- Narrowly tailored: For criteria to be a governing rules—standards to be met by the relevant agents—they must be clearly defined as a specific action. For example, while “governmental legitimacy” is arguably a grounded, prescriptive plan of action, it is difficult to say whether or not certain actions questioned by resolutions are consistent with the legitimacy of the state. Judges need to be instructed by the debaters how to answer the question, “whose argument convinced me that his position met the standard?”, and vague criteria make this a particularly onerous task.
- Contextual: Criteria must be standards of justification against which the appropriateness of actions or commitments can be measured by their relationships values. Therefore, criteria should be *contextual* applications—rules by which the materialization of the value *in the resolution’s particular instance* can be assessed.

This list is surely not exhaustive; these are merely the first few conditions that came to mind when I considered the fundamentals of good criterion selection. Taken together, the above suggestions imply that a value criterion should be an operable rule, grounded in reality rather than in abstraction, that prescribes the normatively right action in a particular context given a particular value premise. If a debater meets the standard implied by the criterion, he has—in the context of the resolution—actually realized the value premise.

Intuition corroborates this conception of the criterion. It makes sense to say that an individual who meets, for example, the contextually defined standards of justice has acted justly. The debater’s job in identifying an appropriate criterion for justice, then, is to determine what actions would determine justice in the contingent situations imposed by the resolution. Examples will clarify the necessity that a criterion be grounded, prescriptive, narrowly tailored, and contextual.

First, consider the debater who defends justice as his value premise, and who suggests that the best standard determining justice is the maximization of social welfare.<sup>1</sup> It is neither discursively constructive nor strategically helpful to conclude arguments by stating that “I maximize social welfare, and therefore promote justice.” The reasoning underlying this intuition is simple: Upholding abstract value premises via abstract criteria renders the criteria functionally useless. In this case, the value premise is meaningless since the criterion itself represents an estimable goal to be sought by society. Because “social welfare” is not an actual, grounded standard governing action, it reveals little about what (practically) agents should do to fulfill the tenets of justice.

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<sup>1</sup> Note that this example holds regardless of the specific resolution.

“The maximization of social welfare” is, furthermore, not at all a narrowly tailored notion. What is “social welfare?” More importantly, what must societies do to advance their welfare? What specific actions should be taken? It is difficult for judges to evaluate a debate in which both competitors justify their arguments by reference to vaguely described evaluative standards.

Finally, “social welfare” is hardly a contextually defined topic. Granted, different societies achieve welfare by different methods that depend critically upon social norms, characteristics, and convictions. But “social welfare” is a criterion employed topic after topic. While this does not render the ideal a poor criterion by default, standards subject to reference in *any* situation—goals like justice, social welfare, morality, and happiness—are indeed value premises, not value criteria, because the function of a criterion is to prescribe how one should act *given the resolution* to manifest mundanely the value premise. Criteria are rules of conduct, not individual or social ideals.

If the value criterion’s *raison d’être* is to provide a standard to be met by noble seekers of particular goals, “social welfare” is clearly not a useful criterion. Let us suppose, on the other hand, that a debater has selected, one again, justice as a value premise. We also assume that the resolution is that “Capitalism is superior to socialism as a means of achieving economic justice.” This time, however, the competitor wisely suggests “the financial elevation of society’s poorest members” as his criterion. His case argues, in line with Rawlsian thought, that social arrangements should be judged by the conditions of their poorest citizens; and he contends that socialism meets the resolution’s standard determining justice by distributing resources based on need, thereby inducing the social elevation of the financially weak.

Does this criterion meet the conditions we have set forth? Certainly. It is grounded—its attainment can be evaluated in real terms (unlike “social welfare,” one can determine by examining evidence whether or not this criterion has been met). It is obviously prescriptive inasmuch as it tells individuals how they *should* act. Moreover, it is narrowly tailored: While the point of contention will inevitably be the question of which distributive scheme elevates society’s poorest constituents, debaters can argue that “action X makes the poor richer,” while they cannot so easily posit that “action X maximizes social welfare,” simply because social welfare is an amorphous, indeterminate, highly subjective goal. Finally, our new criterion defines justice according to the specific context (namely, economics).

The critical message of this section is that criteria must imply the specific steps that must be taken to effect the value premise. It is easier for judges to compare arguments when a virtually tangible criterion has emerged. Vacuous standards like “social welfare” beg questions like “what is that?” that require additional sub-criteria for definition. Once these descriptive standards are engaged, the original criterion is effectively meaningless since the debate’s outcome will depend exclusively on whose position more capably advances whatever particular sub-criteria constitute the criterion. Therefore, it makes great sense to begin with a highly graspable, value-governing standard as the criterion, and to avoid the complex sub-structure of justifying standards required by the employment of nebulous value criteria that fail to meet conditions suggested above.

## **II. Competing Standards: The Resolution of Conflicts Among Various Criteria**

I loosely estimate that 85% of the hundreds of rounds I have judged have ended with unresolved conflicts between incompatible (or at least very different) criteria. Obviously, presentations of differing standards are inevitable since debaters do not know beforehand which criteria their opponents will choose to defend. The problem is terribly difficult when debaters have radically diverse interpretations of the topics are vividly contrasting arguments because (1) the criteria tend to be irreconcilably different and (2) unique, outside-the-box cases typically cannot abandon their value standards and maintain any reasonable chance of success.

The criterion embodies the thinker's subjective cognition of the what's at play in the resolution, and debaters are understandably reluctant to disregard their criteria in favor of good, clean dialogue. Unfortunately, this justified hesitation renders so many rounds impossible to evaluate without the judges influence. Regardless of how objective they claim to be, judges cannot subdue the subjective sway that guides human thought. The surest way to build resiliency against what many consider judicial imperium is to compel the evaluator to act as though he were the fabled objective judge by giving him a single criterion against which to compare arguments.

Of course, that is no easy task; for all but the very best debaters rarely make standard-building their foremost priorities. Where incommensurable criteria are presented, debaters should work in cross-examination to agree upon a mutually acceptable scheme of justification. That is, debaters should do whatever it takes to make it absolutely clear to the judge that the debater who wins the round is the one who best proves/values/serves some clear-cut standard. This requires either one debater's acquiescence to the supremacy of his opponent's criterion, or the construction of a hybrid, justifying mechanism encompassing elements of the different standards. While the resolution of such conflicts and the presentation to the judge of some concrete standard on which to vote should be every debater's first priority in the round, it is indeed optimistic to assume that this agreement will always be possible. Since the use of multiple and compound criteria complicates this matter exponentially, it is worthwhile to spend time discussing strategically advisable plans of action vis-à-vis inconsistent value criteria.

Of course, competitors can sometimes avert the problem of competing criteria by clinging to objectivity when formulating their positions. A standard must be winnable by both debaters for it to be one against which all arguments can be tested. For example, it is absurd to propose a value criterion of redistribution of wealth on the resolution previously considered. Obviously, the debater defending capitalism as the mightiest guardian of economic justice cannot win if the standard to be met explicitly implies socialism.

This suggestion should not be mistaken to imply that debaters must defend value criteria that are consistent with all conceivable value premises. Indeed, that demand would be excessive; and I cannot think of a good reason why debaters should be compelled to offer standards of justification for value premises other than their own. The message is judiciously articulated criteria must be achievable by both competitors to preserve the function of justifying standards as the arbiter of conflicting arguments.

Another strategy that might make the resolution of criteria conflicts surprisingly simple is to develop almost ad nauseam the justification for whatever criterion you select. Proving in the constructive that your criterion is the best way to judge the resolution affords an automatic trigger when your opponent suggests an alternative. For this reason, I become particularly dissatisfied when debaters say things like "My value premise is X, which I uphold through my criterion of Y. My first contention is that...". Criteria, like value premises, must be justified.

When criteria conflict, debaters should weigh the various standards against one another, using the value premises as their guides.<sup>2</sup> That is, debaters should determine the conclusive judging standard by comparing the tendencies of the various criteria to promote the value premises. This is an ambitious pursuit since value premises are by nature purely abstract and relentlessly subjective, but I can offer some help:

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<sup>2</sup> Of course, this is not so easy when there are incompatible value premises complementing the distinct criterion. Refer to the Victory Briefs Value Handbook for suggested strategies regarding the resolution of value conflicts. When both debaters have a unique value criterion characterizing their distinct value premises, it is prudent to address the value conflict first, then to attempt to force convergence among the competing criteria.

- Intuition: It is certainly conceivable, for example, that the reduction of barriers to market entry promotes economic justice by maximizing the overall financial exuberance of an economy; but allocating goods on the basis of merit provides a simpler, more intuitively plausible, less questionable standard determining economic justice. Sometimes, some standards just make more sense than others.
- Necessity vs. Sufficiency: An important distinction many good debaters persistently overlook is that between necessity and sufficiency. A necessary condition is one that must be in place for some goal to be realized, while a sufficient condition is one that, once met, implies the realization of the goal. A favorite example is that possessing a lottery ticket is a necessary, though insufficient, condition for winning the lottery (one who does not have a ticket surely will not win, though one who has a ticket will not necessarily win). The sufficient condition for winning the lottery is having a ticket with the winning numbers. While it is obviously preferable to secure a necessary condition for the value premise than none at all, it is better still to actually realize the value premise by meeting the sufficient conditions. For example, suppose that economic efficiency is a necessary condition of economic justice (without efficient production, there are not enough goods to distribute justly). Similarly, assume that meritocracy is a sufficient condition of economic justice (that is, it is actually economically just to distribute goods according to a meritocratic scheme). While one prefers economic efficiency to economic ineptitude, having an efficient economy does not imply economic justice. On the other hand, meritocracy is the worldly embodiment (one might argue) of economic justice. Although economic efficiency is desirable, meritocracy is the best standard because it actually determines economic justice, while the former merely takes steps in that direction.
- “Gobbling”: Sometimes, it is possible for a debater to prove that the standards of justification suggested by his opponent are either implied by or explicitly contained in his own value criterion (a teacher who thought that we, his class, were verbally inept decided that “subsume” was too complex a word, and allowed “gobble-up” to serve in the more appropriate term’s stead). In the above example, the debater who advocates meritocracy as the determinant of economic justice might argue that his standard involves economic efficiency by implication (since, for goods to be allocated on the basis of merit, they have to be produced). Therefore, economic efficiency matters, but not so much as the broader standard of just distribution. I caution the reader, however, that a standard subsumed by a grander criterion should not be ignored. This is not a strategy designed to relegate one standard to unimportance; it is merely a way to rank the various criteria in terms of their inclusiveness and ultimate nearness to the value premise.

Of course, there are other ways to reduce an undesirably intricate mesh of clashing standards a few flagship criteria. One alternative is to merge the various criteria into a single “compound criterion” (this hybrid standard will be discussed at length in section III). It is even possible to agree with your opponent that both criteria are equally important, and the winner of the round should be the debater who best meets “the most” of each of the criteria. If one standard cannot be shown to be superior to the others, this is how many judges vote. Of course, it is highly possible that one debater will meet one standard surely but lose the other completely, while his opponent partially meets both standards. To oversimplify this scenario to an extreme degree,  $1 + 0$  is just  $.5 + .5$ , so the debater who wins one standard but loses the other does not necessarily defeat the debater who wins a bit of each criterion. This is a difficult problem that will also be discussed in section III.



In any case, it is always prudent to insulate yourself from the misery of losing a round not because you lost the particular arguments on the flow, but because you lost the standard. The best insurance policy is a commitment to win *all* of the reasonable standards presented by either debater. For example, a particularly compelling 2AR explanation would be:

*Recall that the best standard is meritocracy, which is a sufficient condition of the value premise, while the admittedly noble alternatives proposed by my opponent only take steps toward securing economic justice. There are at least three independent reasons supporting the conclusion that capitalism distributes goods on the basis of merit. First, \_\_\_\_\_. Second, \_\_\_\_\_. Third, \_\_\_\_\_. However, even if you accept my opponent's standard for economic justice—namely, economic efficiency—there are at least two reasons why capitalism more completely meets that standard. First, ...*

These little “even-if” stories are quite compelling, and suggest that debaters can lose their own standards but win the round by beating their opponents on their own turf. Before proceeding to the bulk of this work—a consideration of multiple and compound criteria—I should underscore the most important conclusions to be drawn from this analysis.

- Debaters who agree upon mutually accepted standards of justification early-on focus the discussion on particular issues, ensuring intense clash, and mitigate the need for the judge to conduct his own 2NR and 3AR.
- If multiple, distinct criteria are presented, debaters should (1) explain why their standards are more integral to the mundane application of the value premise, and (2) win their opponents standards just in case the judge remains unclear about the standard on which he should vote.
- If debaters agree that there multiple, equally important criteria, participants should explain not only why they win each of the standards, but also why they win them more surely than their opponents. Winning the standards does not win the round for a debater whose opponent has won the same standards with greater precision and clarity.
- A most difficult conundrum arises when debaters either agree that there are multiple, significant criteria or simply opt not to weigh the competing standards against one another, then proceed to each win one or more standards. In this case, debaters probably do not have sufficient time to exhaustively rank the criteria in order of importance (although it probably cannot hurt to rattle-off a few reasons why the criterion one is more surely winning is the most important). The best strategy might be, rather, to confess that “there are simply too many standards in the round, and it is unclear which are the most important,” then do what one can to systematically explain why one wins each of them while his opponent loses each of them.

### **III. Multiple and Compound Criteria: The Truest Standards of Justification**

While the use of multiple criteria continues to excite controversy among debaters, coaches, and judges, the strategy allows debaters to examine more rigorously the nuances of resolutions by forcing them to consider multiple answers to the topic's question.

#### **What are “multiple” and “compound” criteria?**

Multiple criteria are simply numerous, proposed standards geared toward a common value premise. The relationship among multiple criteria employed in the same position does not necessarily have any inherent

structure, nor is it true that those who “run” more than one criterion are always bound to meet all of their proposed standards. An example is the case whose value premise is economic justice, and whose criteria are economic efficiency, meritocracy, and maximizing economic freedom.

The concept of a compound criterion is more difficult. It is semantically correct to state that a “compound” criterion, like a compound sentence, is simply the merger via conjunction of multiple criteria into a single statement. That is not, of course, what I mean by the phrase “compound criterion.” Rather, I am referring to a single statement supporting a particular criterion that is explicitly conditioned by some other standard. It would be correct to call a compound criterion a “self-limiting” one in the sense that compound criteria advance standards bounded by other concerns.

For example, “liberalizing trade without violating human rights” proposes a standard to be sought (liberalizing trade), but recognizes further that the standard cannot rightly be infinitely asserted—there is some rational limitation to the standard that exists where the action compromises fundamentally important principles. The most moral national policy, perhaps, is one that pursues free trade while regarding internationally recognized human rights.

Compound criteria are the truest, most accurate standards of justification because they consider holistically the nature of the resolution, and prevent the domineering imposition of any particular standard. It is intuitive that protecting rights is important. Of course, there are limits to that laudable directive—limits reached when protecting rights clashes with more essentially valuable goals. Courses of actions that are right in a general sense all have their morally acceptable terminations. No ethical society would preserve freedom infinitely, just as no morally conscious nation would pursue its interests capriciously or relentlessly. Compound criteria recognize that, while certain value premises (morality, justice, et cetera) are categorically attractive, no exact deed or standard is morally germane without end.

Examples of compound criteria I have heard recently include protecting the right to construct morally subjective beliefs without violating the objective-by-assumption value of life, maximizing the transparency of the electoral process without restricting the personal privacy of politicians, maximizing economic efficiency while regarding the interests of the poor, and pursuing the United States’ national interests without killing innocents.

### Multiple Criteria In-Depth

#### **Argumentative Flexibility**

I have always suggested that students should begin the case-writing process not by determining a value premise or criterion, but by generating a list of particularly strong arguments for which there is solid, supporting evidence. Frequently, debaters settle on a case with four or five arguments that have very little in common. Consequently, they have difficult times identifying a criterion specific enough to maintain its quality as an operative, grounded rule but vague enough to encompass the implications of the preferred arguments. Multiple criteria allow debaters to advance the logical extension of each of their arguments as an independent value criterion, eliminating the agonizing process of inventing some half-baked standard that has more to do with the arguments themselves than with the value premise.

Of course, debaters should not simply make the “impact” of every argument in their cases an independent criterion; it would obviously be sloppy to have 7 value criteria. Instead, debaters should attempt to unpack the consistencies among their arguments to uncover a couple of relevant criteria. This process is considerably easier once competitors have accepted that it is permissible to have more than a single standard determining the value.

Moreover, readiness to prove the truth or invalidity of the resolution by reference to multiple standards of justification implies a diversity of attack methods. Debaters whose arguments are associated with several standards must not rely exclusively on the fulfillment of any criterion in particular. This multi-layered positioning goes a long way against skilled opponents able to sever links between contentions and the criteria they ostensibly fulfill. If a dangerously strong argument incites a participant's failure to meet a standard, only the strategist with multiple criteria will have the argumentative flexibility requisite to pursuing an alternative measure. In that sense, the use of multiple criteria serves as a safeguard against the inability to meet a standard.

Debaters implementing this strategy also leave themselves some breathing room insofar as they can always downplay the importance of standards they might be losing in favor of alternative justifications. Judges would be hesitant to vote for an affirmative debater who, in the 1AR, decides that meritocracy (his criterion) has suddenly become unimportant (a decision typically made when debaters lose the arguments they need to win their criteria), and shifts his advocacy to favor economic efficiency. However, the debater who opines (in his constructive) that both meritocracy and economic efficiency are determinants of economic justice would seamlessly effect that adjustment.

This elasticity also ensures that competitors can focus on the issues that will most assuredly clash against one another. As I noted previously, debaters do not know proactively which arguments other competitors will advance. For that reason, debates between feminist critiques of genetic science and support of human genetic engineering as a curer of diseases raged on for months. Of course, the lack of clash meant that debates were unorganized, imprecise, and (ironically) boring. Competitors who grant themselves the flexibility to pursue various standards in the same round protect themselves from this ubiquitous phenomenon by adopting various justifying arrangements.

For example, consider the debate between two contenders supporting economic justice via the criteria of economic efficiency and meritocracy, on one hand, and maximization of GDP and the protection of the poor, on the other. Certainly, some clash can be found between capitalist and socialist methods of economic management and distributive frameworks. If the competitors' criteria were merely economic efficiency, on one side, and the protection of the poor, on the other, considerable time would have to be spent determining which standard is more appropriate. While it is of course untrue that competitors who propose multiple criteria will always find clash-laden debates, it is considerably easier for the diverse arguer find conflict with his opponent's scheme.

The use of multiple criteria also simplifies case structure. I have heard literally hundreds of cases with dual value criteria, and one contention (containing two or three arguments) per contention. This structure is simple and effective. More advanced debaters, however, think of creative ways to win, say, criterion one with contention two (and vice versa). The flipside to the coin is that cases can become extraordinarily complicated if debaters support multiple criteria but neglect to clarify which arguments are generally associated with each criterion. Developing a cogent position employing multiple criterion is a delicate balancing act: On one hand, it must be clear that certain arguments meet certain standards. On the other hand, debaters should be ready to win a standard with an argument that was not pre-assigned to that particular criterion.

### **Holistic Appraisal**

Debaters who support multiple criteria explicitly recognize that there is no single, easy answer to the question posed by the resolution. The topic "capitalism is superior to socialism as a means of achieving economic justice," for example, lend many debaters to adopt standards like "economic freedom" as their criterion. Unfortunately, that is only one piece of an intricate puzzle with multiple layers and jagged edges. It is obviously absurd to state that economic freedom is the sole determinant of economic justice

given this resolution. A more complete assessment would consider alternative measures of justice, like the rigidity of the class system, the distribution of goods, et cetera.

Strategic considerations aside, it is pedagogically and philosophically responsible to endorse a system that favors multilateral, rigorous analysis of political, social, and economic questions. The use of multiple criteria can be appropriately viewed as an exercise in accuracy since there are, despite what many “justice through social welfare” debaters report, no single answers to resolutions. Hackneyed proclamations of monumental arrogance declare that “criterion X is THE WAY to achieve value premise Y.”

The strategic advantage to my suggestion is simple: Those who explore more diverse methods of justification are more likely to consider a plethora of arguments (and, by extension, less likely to overlook something important) than their single-standard counterparts. But the decision to pursue multiple standards of justification is not necessarily a road to debate bliss, as the next section will reveal.

### **Attacking Multiple Criteria**

The most basic answer to this question is to do what one would normally do in response to a single criterion (but do it multiple times). The most basic method to prevent a debater from winning the round by achieving his criterion is to discredit the standard itself. For example, in response to a criterion of economic freedom, it would be wise to object that economic freedom often results in the economic despondency of those who cannot compete; unbridled capitalism leads to a culture in which corporations dominate discourse and politics, et cetera. If a competitor proves that his opponent’s criterion is not a good determinant of the value premise, arguments that prove that one debater wins that standard become irrelevant. Therefore, a good strategy is to respond to each criterion independently by suggesting a few reasons why each particular standard might not be so desirable as it seems. Make sure that inexperienced judges understand that, once a criterion has been discredited, it is no longer sufficient for a debater to meet that criterion.

Obviously, some criteria might be morally or politically irreproachable (for example, the protection of innocent lives) to all but the most unreasonable people. When opponents’ standards are reasonable or even unobjectionable, debaters should do what they can to prove that, although their counterparts’ ideas are good, those standards are not quite as consistent with the value premises as some of the alternatives. While the protection of innocent lives is certainly a moral practice, perhaps the fulfillment of national interests is comparatively nobler since the function of government is to meet the needs of their own polities.

The next tactic is the procedural breaking of ties between arguments and the standards they claim to meet. For example, an affirmative might argue that capitalism protects the market that aligns the interests of producers and consumers, allocating resources via the price mechanism, and is therefore an economically efficient system. This line of attack would suggest that capitalism, although it protects the market, does not necessarily embody efficiency because, for example, the wealthy have excessive power to influence prices via wholesale purchases. In its skeletal form, this strategy is to suggest that, even if an argument is true (even if capitalism protects the market), the impact does not follow (it is not necessarily true that capitalism is economically efficient). Again, debaters should systematically illustrate that the arguments explicated by their opponents do not necessarily prove that the latter meets the standards he has set forth.

This strategy is particularly important to attackers of positions employing multiple criteria. The best debaters who defend more than one criterion have subtle links built into their cases, allowing them to meet their standards by multiple, sometimes not so obvious, arguments. For example, the argument that capitalism promotes economic efficiency by endorsing the market can be revamped to suggest that, by sanctioning market processes, capitalism protects the buying power of the poor by ensuring that

profiteering firms do not enjoy absolute control over prices. That is, an argument whose impact is economic efficiency can be rearranged to yield an entirely new impact. Debaters should not assume that their opponents will attempt to win their standards merely via the arguments they state explicitly in their case. The vigilant attacker will do his best to pre-empt these tactics by using preparation time to determine which arguments might be applied in unobvious ways to meet multiple, distinct standards.

Another strategy involves the exploitation of the fact that supporters of multiple standards of justification frequently take on heavier burdens than their counterparts. I am tired of hearing debaters say merely, “my opponent has presented (not one, but) TWO criteria. That means he must win them both.” Not only is this unwarranted, but I do not think it makes intuitive sense. Why, just because someone has admitted that policies can be justified by reference to multiple standards, must he meet all of the criteria he identifies? Holding debaters to that burden would be tantamount to penalizing those who more rigorously examine the issues. The trouble is that there is a common tendency to suppose that one’s criterion is THE appropriate one given the value premise and the resolution. Of course, this superficial “he must win them all” response would not be a problem if debaters realized that there is always more than one way to approach a problem.

That noted, there are absolutely times when a debater’s word choice or justifying framework requires that he meet multiple burdens. A competitor who proclaims that “there are two and only two ways for a society to be a just one” effectively binds himself to meet two standards, and opponents would be wise to point this out. A debater’s failure to meet both of those standards should not, however, automatically determine his loss since it is entirely possible that he has met more of the standard(s) than his opponent. Therefore, while it is always smart to assign the toughest burden to opponents by holding them to the standards they present, one should never assume that the identification of multiple criteria irrevocably binds a debater to meet all of those standards.

Additionally, debaters should look for glaring or subtle contradictions among opponents’ multiple criteria. I remember debating a case whose two criteria were (1) the preservation of individual liberty and (2) the maximization of social welfare. Obviously, unbridled individual freedom demands that agents be free from socially imposed rules geared towards collective elevation. What happens when the criteria conflict—when doing what is right vis-à-vis individual freedom is to do what is wrong regarding social welfare? This is a difficult problem to answer, and debaters might be able to temporarily (or permanently, depending on their opponents’ skill) disable a criteria structure containing incompatible standards and, with it, the arguments associated with those standards.

As a last resort, debaters should attempt to win their opponents’ standards. This is considerably easier on highly particular topics with a limited argument base, but debaters should be prepared to win standards that are not their very favorite on any resolution. Thus a viable strategy in responding to positions relying upon multiple criteria is to (1) discredit those criteria, (2) argue that the fulfillment of the criteria does not logically follow the arguments provided, (3) prove that alternative criteria are more desirable, and (4) win the discredited, unfulfilled criteria (just in case those standards emerge as the ones that will determine the round’s outcome).

### **Defending Multiple Criteria**

The answer to this question should be obvious: Be vigilant of the above strategies, and be prepared to deal with them as necessary. However, defenders of multiple standards have recourse to a few additional strategies.

Debaters should be ready to rank their various criteria in order of importance depending upon which criteria they are winning. For example, a debater supporting economic efficiency, meritocracy, and

maximization of overall wealth/GDP should be able to argue that economic efficiency and maximization of overall wealth are less important than meritocracy because the latter is the embodiment of justice itself, whereas it is possible for injustice to flourish in a wealthy, economically efficient society. Should the same debater encounter a decidedly unanswerable response to meritocracy, however, he must argue that meritocracy is less important than economic efficiency and overall wealth because no one cares much about the internal distribution of goods within a society if that society is mired in poverty and economic destitution. This tactic is essential because it permits debaters to downplay the importance of the standards most well addressed by their opponents, and inflate the importance of those not so thoroughly covered.

Debaters should argue that the fulfillment of their criteria necessarily implies the fulfillment of their opponents' criteria, but also that *this relationship does not hold true in the opposite direction*. For example, one might argue that the maximization of overall wealth/GDP requires economic efficiency. Therefore, once overall wealth is maximized, economic efficiency has been attained. On the other hand, societies can surely be economically efficient but not very wealthy overall. The defender of overall wealth has shown that his opponents' standard (efficiency) is met by default upon completion of his own criterion (maximizing overall wealth). The latter is the more appropriate standard of justification since it is complete in the sense that it meets the alternative standard (efficiency) while providing the desirable byproduct of social wealth. This is a surefire way to defend multiple criteria while simultaneously discrediting opponents' many standards.

Too often, debaters assume that winning more standards (quantitatively) implies general victory. Of course, the debater who wins the round is the one who most surely achieves his value premise; and it is certainly conceivable for a competitor who wins merely one standard to more directly attain his value premise than an opponent who wins multiple standards. Therefore, the fulfillment of multiple value criteria should not be viewed as an end in itself; debaters should focus on the relationship between their criteria and the value premise, and explain that meeting multiple standards suggests a nearly complete realization of the value premise (indeed, this conclusion must be supported by analysis).

### **Complications Involving Multiple Criteria**

The adherent to various standards often finds himself mired in contradictions arising from the logical extensions of his criteria. Obviously, individual freedom is desirable, as is social welfare. But these important values cannot be taken absolutely and in tandem without eventually clashing. At some point, the fulfillment of one criterion necessarily implies the partial sacrifice of the other. Society would hope to find the bliss point at which neither standard can be increasingly realized without compromising the other. Unfortunately, striking this equilibrium demands reference to additional weighing mechanisms determining the proper balance between competing goals; and the problem conceivably results in the infinitely regressive generation of sub-standards.

To resolve this inevitability, competitors should be forthright that their criteria cannot be advanced absolutely and without check. It is simply incontrovertible that noble values clash at some point. Instead of denying this truth, debaters should contend that, although their criteria might conflict somewhere in reality's spectrum, they do not compete in the context of the resolution. For example, while individual liberty and social welfare indeed conflict in particular situations, one could argue (however tenuously) that, vis-à-vis economic justice, the market that efficiently disperses goods both respects individual liberty via economic freedom and promotes social welfare by substantiating the overall social wealth. It should be clear that debaters who present conceivably contrasting value criteria do not automatically lose. There are a few more complications typically resulting from the use of multiple value criteria:

- *Too many standards.* I have seen rounds between affirmative positions employing four standards and negative cases claiming that there are no fewer than six resolutional determinants of justice. Of course, the strategies of weighing standards against one another and ranking them on a metaphysical totem pole can only be taken so far, and it is simply too cumbersome and inefficient to attempt to sort through a dozen vividly contrasting value criteria. This judicial nightmare can be averted if debaters defend only the necessary criteria. As a general rule of thumb, offering more than three standards will probably get you into trouble.
- *Too much ink/too little analysis.* We all know that debaters find some twisted nobility in their abilities to spew out arguments with nauseating rapidity. I have found that debates in which more than two or three standards are important are impossibly difficult to evaluate because debaters, motivated by the ambition just noted, tend to blip-out dozens of ill-explained arguments in an attempt to dramatically win every standard. Remember—the time limitations do not adjust to accommodate the discussion of multiple standards of justification. Therefore, unless one plans to pick up the pace or ease argumentative precision, fewer arguments per-standard can be made. Accept this reality and work with it; do not try to defeat it.
- *The question of burdens.* This previously mentioned problem has been the root of contention within the nation’s finest summer debate institutes and among the league’s most successful participants. There is no absolute answer to the eternal question, “do debaters who propose multiple criteria have to meet them all to win the round?” The answer depends on the position’s verbiage and the nature of the standards as they relate to both the value premise and the resolution. My suggestion is to be reasonable in the burdens one assigns to opponents, but also be prepared to meet the burdens one’s position reasonably assumes.

### Compound Criteria In-Depth

#### **Argumentative Inflexibility**

Indeed, although compound criteria involve multiple, interplaying standards, the aggregate constitutes a single rule. Therefore, those who opt for compound criteria bind themselves to meet each standard implied by the criterion. For example, it should be clear that the debater who notes that both economic efficiency and meritocracy are independent standards determining economic justice is not automatically obliged to execute both criteria. However, the competitor who proposes a criterion like the adherence to national interests without violating human rights finds himself between a rock and a hard place: on one hand, he must advance national interests to meet his standard. On the other, he must accomplish this task without violating conflicting human rights. Unless both elements of the criterion (namely, pursuing national interests while preserving human rights) are fulfilled, the standard is not met.

I should stress the difference between multiple and compound criteria. The distinction is not necessarily that multiple criteria are independent and numbered, while compound criteria are phrased as single statements. The true difference is conceptual rather than semantic: compound criteria (whether numbered or meshed into a compound statement) imply that the standard governing the round’s outcome has multiple parts; multiple criteria are simply more than one governing standard.

Return to the previous example. It is feasible for a debater running the compound criterion “the adherence to national interests without violating human rights” to say something like

*A nation’s essential function is to protect the interests of its citizens. Therefore, governmental legitimacy is served by a criterion of fulfillment of national interests. At the same time, governments must regard humanitarian obligations, like the protection of human*

*rights, that transcend national boundaries. Therefore, my criteria are (1) adherence to national interests and (2) recognition of human rights.*

Had this debater supported the active protection rather than the “recognition” of human rights, his statement might be taken to mean that legitimate governments both advance the interests of their constituents *and* go out of their way to enforce moral norms by promoting human rights. In that situation, the multiple criteria would be the fulfillment of national interests and the protection of human rights; and most judges probably would not vote only for a debater able to meet both standards. But the actual phraseology of this criterion statement implies that legitimate governments *must* advance the interests of their citizens, but they must do so while regarding international humanitarian obligations. This compound criterion implies that the only way for a government to be legitimate is to take into account both tasks prescribed by the criterion. It should be apparent that, just because the elements of a criterion are numbered, does not mean that there are multiple criteria; rather, the numbered standards might belong to some unitary, grander standard of justification.

The vital message of this discussion is that, while multiple criteria are independent standards of justification and therefore do not have to be categorically achieved by a winning debater, compound criteria are standards dependent upon several elements. The realization of compound criteria therefore demands the fulfillment of its independent components.

Whereas competitors pushing multiple criteria enjoy the significant flexibility already noted, those who designate a compound criterion obligate themselves to focus on particular arguments that meet specific standards. While tactically proficient debaters are prepared to win standards via multiple arguments, compound criteria extinguish the peace of mind derived from the ability to ditch seemingly lost standards (and the associated arguments). Simply, competitors who advance compound criteria are bound-up in burdens, and have recourse neither to the strategic ranking of standards (explained in the previous section) nor to the abandonment of particular criteria. This argumentative rigidity has unfortunately left many competitors unwilling to explore the approach.

### **The Truest Appraisal**

Compound criteria necessarily acknowledge the moral limitations inherent to any standard. As should be obvious, individual liberty is important but certainly not inexhaustible. I have heard dozens say things like “his criterion of autonomy is bad because it is immoral to autonomously kill people.” While I am sure that none of our readers are so superficial, avoid that foolishness altogether by noting explicitly that your standard is not one to be limitlessly applied. Usually, the second part of a compound criterion conditions the first part by establishing the boundaries within which the later can operate freely.

This strategy is brutally reasonable. There are always criteria defining noble value premises that are, in context, viable standards of justification. Taken in abstraction, however, those standards often degenerate into tension and immorality. For example, in the context of economic justice, the protection of liberty (economic freedom) is probably laudable. However, in the abstract, liberty is an unbounded notion whose extremity is self-negation (eventually, the freedom of one individual conflicts with the liberty of others). The truest answer to the problem is the one that esteems what is morally right without permitting excess. In this sense, the Millian revelation that individual liberty should terminate at the point at which it clashes with another’s freedom is effectively a compound criterion sanctioning but limiting a noble goal.

### **The Strategic Soundness of Compound Criteria**

In my experience, debaters proposing compound criteria are able to easily preserve the integrity of their standard-scheme. The most common objection, I think, to independent criteria is that they eventually



generate some undesirable consequence that is incompatible with the value premise. A typical objection to multiple criteria is that, sooner or later, they will conflict, leaving an irresolvable tension. The use of compound criteria alleviates these problems by imposing a confining framework upon the standard and conceding outright that the elements of the compound standard clash, then defining that as the point at which the core standard yields to the modifying one. In other words, it is not helpful to respond to the criterion “the promotion of national interests without violating human rights” merely by observing that national interests and human rights often conflict. The author has already expressed that objection explicitly, citing egregious rights violations as the point at which national interests are rightly subverted.

I have noticed that debaters supporting a central criterion with multiple components have convinced judges (and even opponents) that their standards are the most reasonable (probably because they are self-regulating, rationally appropriate, and intuitively appealing). Debaters who establish the supremacy of their standards typically win rounds more easily because the arguments they are ready to explain are associated with those standards. If compound criteria are more easily established as the rightful adjudicators of rounds, it follows that those who correctly apply this strategy will be more successful debaters.

Furthermore, while it is undeniable that debaters supporting compound criteria are obliged to consider all aspects of their value standards, that burden is multilateral. If the best standard determining morality in the context of international relations is that nations should pursue their own interests until the point at which doing so comes at the expense of human rights, a debater can win by proving either that he advances national interests without violating human rights, or by illustrating that his opponent (1) fails to consider national interests or (2) breaches negative, humanitarian obligations. So compound criteria afford the arguer multiple paths to competitive victory.

Compound criteria also confer many of the strategic advantages of multiple criteria without excessively complicating the burdens (indeed, compound criteria assign few, intelligible burdens) and begging for excessive ink and “blippy” arguments. Discussions regulated by such standards must be marked by rigor and precision: One who advances a compound criterion does not have time to consider superficially dozens of irrelevant arguments, and his arguments will find inherent organization in their conformity to a specific, identifiable standard.

It should be apparent that, while there are definite difficulties assumed by the debater who advances a conditional criterion, there are considerable rewards that may well outweigh the risks related to the approach. It is a highly advanced strategy, and debaters should only consider it after firmly grasping the fundamentals of the value criterion explained in other chapters of this book.

### **Attacking Compound Criteria**

The plan mirrors the response strategy to multiple criteria (discredit, provide alternatives, win both debaters’ proposed standards), but is significantly more difficult to execute. It is harder to debunk what we have shown to be a logically reasonable (and often simply correct) value standard, and severing the links between a debaters’ arguments and his compound criterion is similarly tricky since any debater adopting the strategy has probably devoted considerable effort to rigorously proving his standard with a plethora of arguments.

The most basic plan of attack is to unerringly bind one’s opponent to prove beyond doubt that he meets all of the standards he can be reasonably expected to. An experienced competitor should have files of planned, pre-articulated responses to most arguments. Use these “blocks” to illustrate why opponents fail to meet one or more of the sub-standards that comprise the compound criterion. Most of the debate should fall on the contentions and their associations with the standards rather than at the top of the flow.

Moreover, find solace in the fact that debaters' relative obligations in a round involving compound criteria are infinitely more lucid than the burdens assumed by competitors advancing multiple, independent standards. One should direct his efforts to proving that his opponent fails to meet the standards he proposes, and it is always prudent to argue that one meets his opponents' standards.

### Defending Compound Criteria

There is no easy way to defend compound criteria: The elements cannot be internally ranked in order of importance; and losing just one aspect of the standard implies wholesale loss of the criterion and, by extension, the value premise.

Again, establishing the supremacy of a carefully formulated compound criterion should be relatively painless. The real trouble is meeting the difficult burdens assumed by default. Remember, burdens work both ways: If acting justly requires pursuing national interests without truncating human rights, debaters can afford neither to compromise national interests nor sacrifice the integrity of rights. The immediately preceding section suggested that attackers of compound criteria should focus on the reasons why their opponents might not meet their own standards. That is an equally viable strategy for the defender of compound criteria, who should have a readied list of reasons why defenders of the flipside of the resolution cannot possibly meet the various elements that collectively form the compound criterion.

It is often easier to argue that one's opponent fails to meet certain prescriptions, rather than to prove that one meets those standards. Hence, the debate might not be decided in favor of he who wins the standard, but might come down to who "violates less of the standard." One should not be averse to forthrightly conceding that he fails to meet exactly the compound criterion because if his opponent has more clearly and egregiously violated the standards. This strategy might look like

*Recall that the debater who promotes national interests without violating human rights should win. My opponent persuasively argued that economic sanctions might harm populations of innocent citizens. I responded that the moral culpability for that consequence rests upon the leaders of target states since they have the power to correct that wrong. While I admit, therefore, that there is some question as to whether or not I clearly and completely win the standard, my opponent violates both portions of the standard by \_\_\_\_\_ . While neither of the debaters unquestionably wins the standard, it is clear that my position is more consistent with the criteria.*

### Complications Involving Compound Criteria

The only noteworthy complication arising from the use of compound criteria that was not addressed by the previous section (see "Complications Involving Multiple Criteria") arises when two debaters employ different, compound criteria. For example, one debater might advocate the pursuit of national interests without violating human rights, while his opponent might support the maximization of international wealth without compromising national sovereignty.

In this instance, both debaters are understandably reluctant to give up the criterion from which all of their arguments are derived in favor of a squarely incompatible, though arguably similar, standard. Just as the acquiescence of one debater to the other's standard is virtually out of the question, an awkward merger of the two compound criteria is unlikely. And it would be almost impossible for debaters to competently meet the demands of both standards.

Unfortunately, there is no easy way out of this problem (indeed, there might be no way out, period). Debaters who find themselves in this rare but increasingly common quandary must not become mired in

unachievable standards, and should persistently argue that their value criterion is more germane to the value premise. This will require debaters to prove (1) that the value premise associated with their compound criterion is appropriate; (2) that their criterion is the best one governing that value premise; and (3) that they meet the standards assigned by their criterion. I have seen this three-point formula take control of many 2AR's that would otherwise have been doomed. It is tempting to ignore the standards and dig into the nitty-gritty of the cases, but one must remain mindful of the judge's obligation to vote not merely on the logical force of the arguments, but also on the connections of those arguments to some adjudicating standard.

### An Example

Below is an example of the value premise and criterion explanation of a case written for the topic, "the possession of nuclear weapons is immoral."<sup>3</sup> This debater has chosen to employ a traditional, single criterion. His observation, however, effectively renders his criterion a compound one:

*I affirm the resolution that the possession of nuclear weapons is immoral. My value premise is morality, defined as conforming to the standards of right and wrong. While there are various conceptions of morality, there is at least one rule that is almost universally regarded: that human life is intrinsically valuable. This maxim is intuitive: we esteem ideas like dignity and liberty because we assume the sanctity of life. But there is also logical ground for the inextricable association between the sacredness of life and morality: life itself is a prerequisite to all objective and subjective moral claims. Simply, one who is not alive cannot be moral, regardless of what "being moral" means for that person.*

*My criterion is therefore the protection of life because that principle is a prerequisite for moral autonomy. My case will illustrate that the possession of nuclear weapons is inconsistent with the protection of life, and is therefore immoral. Before proceeding, I observe the following:*

*It is obvious that the possession of nuclear weapons imposes at least some degree of risk to human lives. While I will later argue that this risk is substantial, here I suggest merely that, in order for **any** risk to human life to me morally permissible, it must meet 2 standards:*

*First, the risk must be **necessary**; it is obviously immoral to risk lives without cause. Second, the risk must enjoy **probable effectiveness**, for it is also immoral to risk lives in what may well be a futile, even if noble, effort. If my opponent doesn't prove that the possessions of nuclear weapons is both necessary and probably effective, he has not met the tests requisite to justifying the risk his position imposes.*

This position illustrates clearly the argumentative might of the compound criterion, which demands that life be protected unless (1) it is necessary to risk life, and (2) the risk can be assumed to yield favorable results. This debater has justified his value premise of morality by referencing the resolution. He has conceded the subjectivist response that morality is not absolute, but rejoined that there is a single moral principle that must be taken as objective (namely, that life is valuable). Should this assumption be neglected, he argues, morality cannot exist since life itself is requisite to moral reflection.

Therefore, this case employs a justified standard determining the value premise's worldly manifestation. However, this debater recognized that "the protection of life" is, in the context of the resolution, too

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<sup>3</sup> This is a hypothetical, undeveloped case for the January/February, 2001 NFL Lincoln-Douglas resolution.

limitless a value. If nations out to protect life without exception, they should never do things like commit to war, build dangerous weapons, et cetera. Therefore, the debater identified two conditions that must be met before life can rightly be sacrificed.

This debater can win the round by proving any of the following:

- That he more surely protects life than his opponent
- That his opponent risks lives where there is no need to do so
- That his opponent risks lives by means of a plan that will likely not realize its stated aim

The debater has smartly conditioned the central standard, the protection of life, with modifiers that assign burdens that are easy for the affirmative to respect, but prohibitively difficult for the negative to meet. Of course, the possession of massively destructive weapons threatens lives, and it is uncertain whether or not that risk is either necessary or practically effective. It would be arduous, however, for the negative to display that the affirmative neglects life where there is no compelling reason to do so. This debater has more or less designed a compound criterion that puts all of the burdens on his opponent.

If this debater had supported as his only criterion the protection of life, the debate would be decided in favor of the competitor whose policies are most consistent with that maxim. However, the affirmative's compound criterion means that, even if the negative protects life, he has to meet to additional standards to justify the risks associated with nuclear armament. Since the affirmative explicitly rejects nuclear weapons, he is not so directly bound to the latter two bulleted points (above), and should have little trouble winning the round by proving that (1) he protects life to a greater extent than his opponent, and (2) even if his opponent best preserves life, he fails to meet the two standards requisite to the justification of the risks associated with the policy he endorses.

I hope this example has elucidated this admittedly complex subject. Compound criteria are extremely powerful devices that, in my opinion, are more consistent with the pedagogical aims of Lincoln-Douglas debate than the alternatives.

It has been my pleasure commenting on this topic, about which I remain passionate. The criterion is too often overlooked viewed by debaters as an institutional necessity rather than a standard governing the rightness or wrongness of a particular course of action. I have watched many debaters break-through from average to national circuit contender; unsurprisingly, this transition often occurs alongside the appreciation of the criterion as the single factor most influencing judges' decisions.

I encourage you to study this and the other sections of this book carefully, and to refer to it as necessary throughout the case-writing process. An understanding of the material represented in these pages will prove indispensable when tournament season begins in August.

Good luck, and I look forward to seeing many of you next academic year.

## Around the World of Lincoln-Douglas Criteria

by Jon Gegenheimer

Throughout this book you will find countless suggestions from championship debaters regarding the theoretical use of and practical philosophy behind the value criterion. The purpose of this overview is to address in some detail the most common, useful, strategically sound, and academically important standards of value justification.

While one can imagine literally dozens of value premises pertaining to specific resolutions, it is my view that almost all value premises employed by debaters are subsets of the two grandest (and, incidentally, most common): justice and morality. I have therefore opted to divide this work into three sections. The first considers value criteria relating to justice and the state. The second addresses the most relevant standards determining morality.

I am not concerned with providing debaters with a list of value premises and the criterion that practically enforce those norms—that method would not be pedagogically constructive, and would probably constitute the sort of normative indoctrination so harshly criticized by some scholars about whom you will soon learn. Instead of the laundry-list format, this work is arranged as an essay. Since this is a handbook about value criteria, I have italicized and bolded standards that arise throughout the work that might make viable value criteria.

### **I. Standards Concerning Governments, Global Affairs, Distribution, and Justice**

#### Governmental Legitimacy

**The Social Contract.** While I can think of many topics (human genetic engineering, for example) that have little or nothing to do with the relationship between a government and its people, arguments contingent upon governmental legitimacy and the social contract have permeated debates on every resolution in recent memory. Everybody understands that the social contract is a (hopefully) binding agreement whereby polities yield individual rights in favor of physical protection by the state. But few debaters appreciate the nuances of social contract theory, ostensibly because they think that such scholarship is unnecessary as far as winning rounds is concerned. However, I have continually noticed that the best debaters—and the most successful—are the deepest and most critical thinkers.

Moreover, debaters who run social contract analysis must be prepared to address rebukes like “contention one is incompatible with the Lockean social contract because \_\_\_\_\_.” Even debaters who are not interested in supporting the social contract should be knowledgeable about the subject; I promise any competitor who debates more than twenty rounds that he will be paired against a participant whose case not only mentions the social contract, but relies upon it. This section aims to arm you with the knowledge you’ll surely need to develop value criteria involving the social contract and to attack these standards.

**Locke’s Social Contract** is grounded in *consent*. The citizenry, for Locke, collectively agrees to transfer some rights to the government, which derives its legitimate authority from this exchange. In return, the state is obliged to protect the *natural rights* (for Locke, these are life, liberty, and property) of its body politic. The construction of this agreement marks the categorical obsolescence of the state of nature (an anarchic locale in which man enjoys unbridled liberty). Unlike Hobbes’ (this is a fine point that many debaters ignore), Locke’s state of nature is not one characterized by relentless violence; for Locke thought that even natural man is bound by reason:

But though this be a state of liberty, yet it is not a state of license; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions.<sup>4</sup>

The key for Locke is that the transaction that constitutes the social contract does not mechanically generate an irreproachable sovereign. Should governmental rule become capricious, the citizenry is rightly able (and maybe obligated to) re-claim the power that the state previously held on trust. When the polity no longer consents to its ruling body, the social contract no longer holds (indeed, the contract is voided automatically by the abusive government), so the people are no longer obligated to obey the state. Rule conducted by a publicly rejected authority constitutes governmental illegitimacy since the official government ceases to be such upon the withdrawal of popular consent. **Governmental legitimacy**, for Locke, is a function of the willing acquiescence of a populace to a ruling entity; and illegitimate governments should be insurrectionally annulled and systematically replaced.

A favorite response on a very recent resolution was that it is not so easy to establish a novel government. But Locke responded that individuals have never accepted passively the rulership of the governments that bound their fathers:

For there are no examples so frequent in history, both sacred and profane, as those of men withdrawing themselves and their obedience from the jurisdiction they were born under, and the family or community they were bred up in, and setting up new governments in other places, from whence sprang all that number of petty commonwealths in the beginning of ages, and which always multiplied as long as there was room enough, till the stronger or more fortunate swallowed the weaker; and those great ones, again breaking to pieces, dissolved into lesser dominions; all which are so many testimonies against paternal sovereignty, and plainly prove that it was not the natural right of the father descending to his heirs that made governments in the beginning; since it was impossible, upon that ground, there should have been so many little kingdoms but only one universal monarchy if men had not been at liberty to separate themselves from their families and their government, be it what it will that was set up in it, and go and make distinct commonwealths and other governments as they thought fit.<sup>5</sup>

While you will probably not find yourself in a position to argue that, descriptively, popular consent has been withdrawn, you may well be able to contend that the citizenry has the right to, or should, withdraw consent; or even that a particular action taken by the state (for example, oppression) represents a breach of contract, and an automatic exemption of the polity from their reciprocal duties to the state. In attacking Locke's social contract, it is always popular to point out that illegitimacy follows the withdrawal of majority consent to the state. Therefore, Locke's system leaves the minority helpless in cases in which the government acts unjustly towards them but the majority is unwilling to dissent. **Protection of the minority** might be an excellent criterion on cases poised to assault the social contract.

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<sup>4</sup> John Locke, *Second Treatise on Civil Government* (New York: Prometheus Books, 1992), Ch. 2, pt. 6.

<sup>5</sup> *Ibid.*, Chapter 8, pt. 115.

*Rousseau's Social Contract* opens with the famous words, "Man is born free, and everywhere he is in chains."<sup>6</sup> While Rousseau's "social compact" is strikingly similar to Locke's, the former concerns the relationship among members of society, while the latter focused on government-citizenry relations.

I suppose men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer; and the human race would perish unless it changed its manner of existence. But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert. This sum of forces can arise only where several persons come together... the problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before. This is the fundamental problem of which the Social Contract provides the solution.<sup>7</sup>

Both Rousseau and Locke emphasize the importance of *maintaining checks upon governmental power*. Locke proposes that legitimate governments rule by means of an explicit constitution chartered by representatives of the body politic, and claims that state transgressions of constitutional prescriptions signal the justification for insurgency. Rousseau spotlights the popular position as government's constituency, and suggests that the people wield great might over the regime by virtue of the fact that the government is nothing more than the aggregated interest of the polity.

The *Hobbesian Social Contract*, elaborated in his seminal work, *Leviathan*, is not so worried about exceptionally mighty governments. Hobbes thought that men are aggressive by nature, and his government-less state is one in which men are at constant war against one another. The only hope of *protecting individual liberties* is, paradoxically, the wholesale restriction of license by a monstrous, omnipotent government (a veritable leviathan).

The final cause, end, or design of men (who naturally love liberty, and dominion over others) in the introduction of that restraint upon themselves, in which we see them live in Commonwealths, is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent, as hath been shown, to the natural passions of men when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants.<sup>8</sup>

Thus Hobbes' government *compels obedience* by an apparatus of fear. This conception of an almighty government is extremely helpful for debaters whose positions might be shown to degenerate into systems of excessively vigorous governments. The key is that the leviathan is not an arbitrary ruler; its Machiavellian task is simply the *preservation of order*, which Hobbes viewed as requisite to the liberal assertion of human freedom. For freedom to thrive, liberties cannot be heedlessly assertive. Debaters who (albeit understandably) *fear totalitarianism* often overlook this fairly intuitive notion.

<sup>6</sup> Jean Jacques Rousseau, *The Social Contract* (New York: The Pelican Group, 1972), Chapter 1.

<sup>7</sup> *Ibid.*, Chapter 6.

<sup>8</sup> Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), Ch 17.

Defenders of the Hobbesian system should read Leviathan carefully, and have a pre-arranged bundle of responses to the ubiquitous claim that Hobbes' government is frighteningly powerful. A trip to any university library is a good investment since there is so much literature concerning this particular issue. Attackers of Hobbes' work should consider the morally unfortunate implications of Hobbes' assumption that man is bellicose by default, and should further exploit the possibility that a leviathan-esque state would—if man's ambitions are egocentric—degenerate into tyranny. It might not make good sense to curb a human frailty by erecting a framework of graded power relations where some men rule others.

**Democracy and Statecraft.** One recent topic concerned the importance of the balance of powers for democracy. Another (that has, unfortunately, not been selected) considered rival views of judicial interpretation of the U.S. constitution. These issues relate to the more fundamental problem mentioned earlier: How can governments that necessarily enjoy authority be kept in constant check? The matter arises repeatedly in LD, so it is worth examining in some detail.

Perhaps the most proficient safeguard against government intrigue is a system of *democracy* cemented by the explicit *rule by the governed*. Obviously, people who enjoy self-rule will not truncate their own political liberties; so democratic schemes limit the possibility of aggression by the state. Several recent resolutions have mentioned democracy, and I suggest that you read Robert Dahl's work On Democracy for an outstanding description of the design. Dahl even addresses the relationship between capitalism and democracy, and in the process defines a unique form of democracy that he calls "*polyarchial democracy*." It is certainly worth your time.

But there are practical barriers to perfectly democratic rule. Should an elected official or institution transgress, there are considerable lag-times between that violation and election day. In the extreme case, democracy offers little recourse to a forcibly subverted people. Therefore, one must examine further possibilities while accepting democracy as an initial step towards just rulership.

An initial added measure involves the state's operational infrastructure. If state power is the concern, fragmenting power along institutional battle lines may well avert tyranny. Moreover, charging these constituents with distinct, often conflicting responsibilities might ensure that turbulence remains within the government itself, and does not spillover into the relationship between government and governed. Indeed, the *separation of powers* is a theoretically and empirically sound guardian of the public good.

The asymmetrical sense of the radical democratic model of the separation of powers on which, at least ideally, parliamentary systems are also based, did not so much follow a logic of subsumption which would have its point of departure in the semantics of the abstract, general law, but is implied by the procedural conditions of popular sovereignty. It established the one-way street of forming will and control from "below" to "above," while not permitting arbitrary interventions from "below." It was thus possible to unleash the voluntarism of popular sovereignty and thereby also bind all state apparatuses. Constitutional procedural differentiation, by creating institutional veils, prevents power or interests, structurally and in all directions, from asserting themselves recklessly.<sup>9</sup>

Maus clarified that the establishment of democratic functionalism, or the democratic rule by various organizations designed with a specific executive, legislative, or judicial task in mind, allows the body politic to check the government's power without encouraging "arbitrary interventions from below." This

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<sup>9</sup> Ingeborg Maus, "Liberties and Popular Sovereignty: On Jurgen Habermas's Reconstruction of the System of Rights," *Cardozo Law Review*, Volume 17, March 1996, page 845-846.



is the model Montesquieu had in mind, and Madison and Hamilton advance particularly lucid, persuasive suggestions in this vein in the Federalist Papers, which debaters should most certainly read.

Many critics have retorted that, even if fractioning state power averts tyranny, more complexly structured states rule imprecisely and inefficiently. This is a theoretically developed but empirically questionable argument worth looking into. The most obvious rejoinder is that any monarchical government may well regress into a tyrannical system, so good governments must have at least a few operative bodies. But there is no way to prove that a four-part state is necessarily less efficient than a two-part state. Furthermore, it might be safe to assume that citizens would rather slow but just governments than expedient, totalitarian ones. The Victory Briefs handbook covering the 1999 CFL Nationals resolution explores these issues in-depth.

**Constitutions.** Another of Locke's favorite guardians against tyranny is *adherence to a written constitution*. Indeed, these documents are outstanding materializations of contracts between governments and citizens, and make it easy for one side to justify its accusations against the other by reference to an actual, binding document. But the phraseology of a recent topic implied that even bodies politic ruled by internally divided governments and explicit, sacred constitutions are not safe from whimsical rule by leaders acting under the influence of subjective preferences. Most segmented governments include an organization (or group of them) responsible for drafting and enforcing laws, and a judicial branch to decide matters when enforced laws are violated. Recent tensions (and debate resolutions) have concerned the latter.

**Judicial Activism** refers to the process by which judges (in particular, U.S. Supreme Court Justices) liberally interpret the constitution's text, establishing precedent that effectively creates new law. The literature in defense of this process is vast and compelling. Obviously, there is no static model to which legal violations adhere. Therefore, there cannot exist a rigid protocol by which judges make decisions (not even the constitution). Judicial activism grants judges the liberty to make, proponents argue, the most appropriate, case-by-case decisions by exempting them from categorically binding, literally interpreted regulations stipulating the conditions of judicial rule.

**Strict Constructionism** (often referred to as *textualism*), on the other hand, refers to the process by which judges hold fast to the actual text of the constitution when making decisions. At first, this seems like an exercise in obsolescence—a lot has changed in over two hundred years. However, textualists have an arsenal of frank, simple answers to their critics. While it is true that certain evils, like slavery, persisted under constitutional rule, the amendment process settles these difficulties, and confers the added benefit of being overseen by the legislative body whose function is lawmaking. And while there are always unique situations conditioning every court case, the constitution (the Bill of Rights in particular) is probably flexible in and of itself.

Moreover, the “living constitution”, many argue, allows judges almost limitless authority to “legislate from the bench.” The essential purpose of separated powers is the prevention of one branch from interfering with the duties of another and claiming the excessive power that might cause tyranny. Justice Scalia is perhaps the most famous textualist, and he noted the seemingly obvious: the constitution means what it says, and does not mean what it does not say. Scalia views the constitution as the anchor that perennially assures Americans that their rights will be protected. Laws that need to be passed or repealed should be done so democratically since the legislature is designed to afford popular representation, but the judiciary is not (the judiciary's function is merely to apply, based on the constitution protected by the legislature, laws to specific transgressions). Judicial activism might constitute the construction of social conditions by the normative whims of judges. This rather informal, somewhat sarcastic commentary should give you an idea of the brutal reasonableness with which Scalia tries to frame his position.

The argument is "The Constitution is meant for a living society. If it could not grow and evolve with the society, it would become brittle and snap. You have to provide the flexibility." A very plausible argument. It sounds wonderful until you start to think, "Now, wait a minute. To these people, who want to chuck away the...original constitution, is it flexibility they're looking for?" What was the situation, before *Roe vs. Wade*? If you wanted a right to an abortion, create that right the way a democratic society creates most rights. Pass a law. If you don't want it, pass a law against it. Or capital punishment. I have sat with three colleagues on the Supreme Court who thought that capital punishment is unconstitutional even though the Constitution mentions capital punishment. The clause you're all familiar with: "No person shall be deprived of life, liberty or property without due process..." What do you think they're talking about? They're talking about the death penalty. And elsewhere, it says you shall not be sentenced for a capital crime without a grand jury indictment. What do think they're talking about? They're talking about the death penalty, clearly approved in the text of the Constitution...For the constitutional evolutionist, everyday is a new day. And so, the death penalty may be unconstitutional. Now does that produce flexibility? Under the original disposition, you want to have the death penalty? Enact it. You don't want it? Repeal it. That's flexibility.<sup>10</sup>

To add insult to injury, judicial activism might even water-down already existing, constitutionally protected rights. In *Rights Talk*, Mary Ann Glendon famously argued that an ever-expanding list of rights might trivialize the founding essentials of rights themselves. Refer to the section of this handbook on rights for additional analysis.

The rise to prominence of Scalia's textualism has raised important questions about hermeneutics, linguistics, and the assumptions that influence the epistemic community called the judiciary. Were the framers of the constitution so prodigiously sensible in the laws their signatures institutionalized that judges should abide by them unerringly? Or have times changed so much that the constitution is beyond repair by the amendment process? These are questions you will hopefully be forced to answer in an upcoming debate topic. If not, you will surely be required to consider them in college.

### States and International Relations

At least four topics in recent memory have concerned either justice or morality and international affairs. I am thinking in particular of the topics on national interests versus global concerns and human rights, the intervention of one nation in another's domestic affairs, the morality of economic sanctions, and the moral permissibility of nuclear armament. I have placed this discussion in the "justice" section only because I believe that justice (like international relations) is a function of governments, while morality is determined by individual choice. However, much of what is noted here will be perfectly applicable to topics asking about foreign policies and morality.

I believe that all of the conflicts just mentioned can be reduced to the essential problem of international affairs: International anarchy exists as a system in which rightfully sovereign nation-states are obligated by contract to advance the interests of their citizens, but the interests of one state are often incompatible with the interests of other nation-states or of the world.

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<sup>10</sup> Justice Antonin Scalia, "A Theory of Constitutional Interpretation," remarks at The Catholic University of America, Oct. 18, 1996.

**Sovereignty and Anarchy.** The international system is dominated by nation-states (both official and unrecognized) not controlled by a *supra-national authority*. While the United Nations, the World Trade Organization, and the North Atlantic Treaty Organization are immensely powerful organizations, they do not have the legitimate right to enforce rules and regulations in the international arena the way governments do vis-à-vis their subjects.

The concept of *sovereignty* is key to understanding international relations. Sovereign nations enjoy a monopoly over the use of force within their polities, and this claim is accepted by many nations as inalienable. For other nations, non-governmental organizations, or supra-national organizations to wield might within national boundaries therefore constitutes a breach of an internationally recognized norm. Therefore, there cannot be any international authority charged with the responsibility to regulate the domestic affairs of constituent nation-states.<sup>11</sup> Of course, the trouble is that, in a system in which no organization has a legitimate claim to control another implies the absence of checks against capricious states that violate the rights of their own citizens or of members of other nations. The myriad proposals aimed at softening this dilemma have converged to form three major paradigms in international affairs: realism, pluralism/liberalism, and globalism.

*International Realism* focuses not on the policing of international politics, but on each nation's fundamental and binding duty to actively protect its citizenry from foreign aggression. The realists apply the Hobbesian vision to international affairs. For them, the international arena is an anarchic one in which ambitious nations will stop at nothing to procure self-edification. Instead of charging a sovereign with the obligation to mediate affairs, however, the realists part with Hobbes; and they suggest that each nation should arm itself mightily and rigorously pursue its own interests. While the realist outlook is certainly bleak, it bears rational force because the premises upon which the position is constructed are theoretically and empirically valid. History is replete with international bloodshed as states pursue their goals at the expense of others, and acquiescing to the whims of foreign nations renders home governments illegitimate. Realism is nothing more than a proposed way to manage the nuanced difficulties imposed by systemic anarchy. Its focus is on the obligation of nations to advance relatively in the international power hierarchy to ensure safety for its own citizens; what matters for realists is a state's position in the *international balance of power*.<sup>12</sup> As you might guess, much of the most persuasive literature on *nuclear armament and deterrence* is authored by some of the leading realists, including Henry Kissinger, Hans Morgenthau, and Kenneth Waltz.

*International Liberalism* and *International Pluralism* criticize realism on multiple fronts. First, pluralists and liberals argue that realism is mired in the status quo; by observing international anarchy and inferring that nations must arm and draw often artificially bright distinctions between their interests, the paradigm reifies the anarchic system that roots the original problem. In other words, pluralists and liberals think that realism's commitment to perpetuate international tensions results in a self-fulfilling prophecy whereby a status quo of turbulence is sustained.

Pluralists in particular argue that states are never the unitary, rational actors realists assume them to be. To suppose that a state has interests representative of its constituency yet exclusive of foreign citizens is to absurdly conclude that members of nations—in all their cultural diversity and pluralistic division—can

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<sup>11</sup> The distinction among “nation,” “state,” and “nation-state” is important and often overlooked. A “nation” is a people united by a common heritage, race, culture, genealogy, et cetera. A “state” is an internationally recognized independent geopolitical entity. And a “nation-state” is a state whose borders fall along national lines.

<sup>12</sup> Realists are so concerned with matters of national security that they call diplomatic matters “high politics,” while less important policies are referred to as “low politics.”

be adequately represented by the unitary voice of the state. Moreover, government bureaucracies are comprised of literally thousands of competing voices. At best, final policies are hodge-podges of conflicting opinions. At worst, the process of hardened compromise encourages leaders to accept the idea that *any* policy is an accomplishment (since they're so hard to agree upon) and, by extension, a good one. Janus calls this troubling phenomenon "groupthink," and suggests that it often results in sub-optimal policies.

Liberals agree with the pluralist critique of realism, but they are a bit more optimistic than their pluralist counterparts. Liberals (not Bill Clinton liberal, classical liberal) underscore the increasingly obvious **globalization** of economics, and contend that nations should push to open borders to mutually beneficial trade and liberalize the international economy in general. The liberals have wisely observed that states that are economically bound to one another cannot afford to fight. Therefore, international liberalism promises the relegation of war to history, and offers the byproduct of economic bliss for transacting nations. The continued success of the European Union, now fifteen-strong, corroborates empirically the liberals' theory. Indeed, as goods and labor enjoy increased mobility within the EU, member-states have become more economically stable, more resilient to swings in world markets, and less willing to aggress against one another. There has not been a war in Western Europe since the inception of the EU.

While liberalism and globalism are technically distinct paradigms, they are not inconsistent with each other, and have more or less joined forces: The pluralists critically appraise the realist paradigm, while the liberals harp on the empirical success of liberalization as a guardian of peace.

**Globalism**, on the other hand, disapproves of the hostile ambitions of realists, and rejects of the liberal commitment to what the latter view as economic freedom. Globalists contend that international economic liberalism has led to gross asymmetries in the wealth and power of nations. While first-world ("core") nations have enjoyed prosperity, smaller, "peripheral" nations have been increasingly marginalized and exploited. Despite formal, mathematical analysis advanced by the world's leading economists suggesting that all nations—large and small—profit from international trade, globalists insist that international liberalism is the means by which large nations engage less economically developed ones in cycles of dependency, in which the major players systematically exploit the 3<sup>rd</sup>-world which (1) benefits the former economically and (2) maintains the latter's status as "peripheral." The most influential globalist is probably Immanuel Wallerstein, who, in the Marxist tradition that will be discussed later, traces the historical development of the world economic system, the adjustment of nations from the periphery, semi-periphery, and core, and the inevitability of an eventual transcendence from international capitalism to a more egalitarian scheme. Globalists site the **prevention of international exploitation** as their *raison d'être*.

Despite the compelling theoretical and quantitative evidence in favor of free trade (I'm sure you can figure out on whose side I rest!), globalists continue to protest the WTO and IMF, and they remain a loud voice in international politics.

These paradigms are immeasurably useful as value criteria on topics concerning international relations. While they are not exact policies, they are ways of thinking about international problems. To justify analytically the adoption of one of these modes of thought will go a long way in determining what is and isn't plausible in the international arena. Employing realism as a criterion on the economic sanctions topic would make for a powerful affirmative: If nations are obligated to order complicated international affairs with their citizens' interests at the helm, economic sanctions may well be morally justified. Similarly, the intervention of one nation in another's affairs might be legitimized by virtue of the international dog-eat-dog system that compels nations to forcibly advance their own ambitions. On the

other hand, perhaps the liberals are right that hard-line policies of nuclear armament will only heighten tensions; while policies of increased economic freedom will bind nations inextricably, averting conflict.

These three paradigms (the first two in particular) have their own unique, elegantly formulated positions on every issue in international affairs. But you have a lot to learn. There are fundamentalist, functionalist, and neo-functionalist realists (there are even neo-realists). Some realists believe that multilateral balance of power is preferable because, in a world in which there are many nations with distinct interests and similar power, international relations are so complicated that no nation would dare aggress against another due to the unpredictability of the international response. On the other hand, some argue that such uncertainty would actually make war more likely. Further, there are different strands of pluralism and liberalism, and even more diverse globalist communities. I encourage you to continue reading on this subject; knowledge of these issues will serve you well. The two best books I might suggest are Viotti and Kauppi's International Relations Theory, which explains these paradigms in detail, traces the positions of great thinkers like Rousseau, Hobbes, and even Foucault regarding international relations, rigorously analyses morality in international affairs, et cetera and Robert Gilpin's International Political Economy which focuses on the conflicts among the paradigms, and on the force of the liberal argument.

**Morality and Culture.** In a period in which there are thousands of cultures, religions, epistemic communities, social organizations and institutions, races, and nations, it should be no surprise that *moral relativism* is a well-represented trend in international affairs. After all, if none of us can grasp absolute truth, what gives one nation the legitimate authority to impose its normative conceptions upon other groups? Of course, this is as much a domestic problem addressing the relationship between government and governed as it is a problem of international affairs. But the dilemma assumes extreme importance in world politics because blood is often shed on a grand scale over the issue.

Renowned scholar Samuel Huntington argues in his work Clash of Civilizations that the battle lines of the 21<sup>st</sup> century will be determined culturally. In sum, the lack of visible, moral objectivity compels nations to abandon moral reason as their guiding principle in world politics. The “kin-country” effect leads cultures to support militarily those nations whose ideals are consistent with their own. As cultural clash has escalated throughout the latter half of the 20<sup>th</sup> century, Huntington predicts that the future, especially in Eastern Europe, the Middle East, and Southeast Asia, is a nauseatingly bloody one. The problem is particularly pronounced where nations and states are not coterminous; i.e., where official state borders do not run alongside cultural, demographic divisions, forcing idealistically incompatible cultures to rub against one another within a single state. The *aversion of international conflict* and the *protection of innocent lives* will be difficult tasks, Huntington thinks.

Although this conclusion has drawn attack from the very best international relations theorists, it is undeniable that *the preservation of culture* continues to assert itself vigorously upon statesmen. Many theorists *reject hegemony*, which is the process by which a hegemon (a nation-state that rules international affairs by exerting extreme and unmatched power) imposes its subjective, moral views upon weaker nations. Since nobody can actually demonstrate the objectivity of any moral tenet, it necessarily follows that the hegemonic projection of subjective morality as objective violates target nations' legitimate claims to construct their own moral frameworks.<sup>13</sup>

Obviously, the *preservation of moral autonomy* is an inexorably important principle for topics concerning the intervention of a nation in its neighbor's affairs. While it seems intuitive that morality

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<sup>13</sup> Many theorists (mostly realists) actually endorse hegemony as the only process by which international order is guaranteed by a hegemon that violently prevents subverted nations from committing to battle.

requires that nations not forcibly compel others to accept their own subjective moral codes, there are persuasive arguments (to be discussed in more detail in section two) suggesting that, while objective morality is unidentifiable, nations that wish to preserve the very freedom by which subjective, normative opinions are constructed must enforce just a few moral codes, namely *the protection of individual freedom*.

Moreover, many contend that moral relativists and subjectivists implicitly appeal to the concept of human dignity by assuming that people are inherently due the right to commit autonomously to internally contrived moral stances. Therefore, it is plausible that *the preservation of human dignity* is a value to which even subjectivists make reference. Finally, the most simple objection to the relativistic call contra hegemony is that, if basic values, like the protection of life, are not enforced, gross transgressions (the Rwandan genocidal massacres, for example) will result in the positive destruction of moral autonomy (indeed, dead people do not fashion subjective moral systems). So while the wholesale exportation of moral frameworks is antithetical to moral autonomy, the preservation of morality itself requires that nations adhere to just a few (albeit indemonstrable) principles; and it might take hegemonic or extremely powerful nations (like the U.S. or E.U.) to enforce those requisite norms. This concept will be explored in additional detail in section II.

### Distributive Justice

This is a subject of particular interest to this student of economics. Of course, you will quickly determine where I stand on the debate, but I have done my best to fairly represent all positions. Refer to Mr. Foell's section of this handbook for a more detailed consideration of many of these issues.

**The Marxist Critique.** While this essay is too limited in scope to address such a complex advocacy in great detail, I will attempt to cover the fundamentals of critical *Marxism*. Marx observed that, throughout the industrial revolution, the financially despondent proletariat perpetually labored for the exclusive benefit of the wealthy bourgeoisie, who paid only wages necessary for the sustenance of the workforce. For Marx, man's ability to "objectify reason in the world" distinguishes him from animals.<sup>14</sup> When someone else controls the physical manifestation of man's reason, that is, when his employer seizes the worker's product, the materialization of man's impulse is distanced from man himself. Marx's notion of self-estrangement, then, targets bourgeoisie ownership of the product manufactured by laborers. Lukacs expounds upon Marx's analysis:

Lukacs' original German term for reification—*Verdinglichung*—literally translates into 'thingification'. Lukacs used the term to denote the general tendency for objectifications of human activity to become estranged from the subjects who produced them, thereby assuming a 'natural' appearance which serves to mask their social genesis. Within this condition of estrangement, human subjects fall prey to blind determination by objective forces of their own creation and dead 'things' appear to be the really active agents.<sup>15</sup>

To escape the cycle of low wages and estrangement, Marx calls for the forceful overthrow of the capitalist system. He favors a revolution "of the majority [and] in the interests of the majority."<sup>16</sup> Distributive

<sup>14</sup> Karl Marx, *Economic and Philosophic Manuscripts of 1844* (London: Lawrence & Wishart Press, 1975), 260.

<sup>15</sup> Leon Bailey, *Critical Theory and the Sociology of Knowledge: A Comparative Study in the Theory of Ideology* (New York: Peter Leng Press, 1994), 12.

<sup>16</sup> Marx, *Economic and Philosophic Manuscripts of 1844*, 74.

justice demanded, for Marx, the *distribution of goods via need*. Marx's distortion of the *Hegelian Dialectic* (the process by which thesis and antithesis encounter one another, generating synthesis) suggested that capitalism would progress to socialism and, eventually, to communism (synthesis).<sup>17</sup> While Marx thought that communism was an economically optimal framework, he also valued greatly the communal ties enjoyed by those who participate in the scheme.

Thinkers found vibrant social interaction in the market as far back as Aristotle, however. Aristotle thought that the process of exchange in the marketplace sponsored community: "Reciprocity will be attained when the terms [of exchange] have been equalized...In this way, they are equal and members of the community...there is no community without exchange."<sup>18</sup> Exchangers are equal to the extent that their dollars (or whatever the monetary unit may be) are of equal value. The market attracts participants who both have and need; it is itself a communizing contrivance. That an individual's monetary assets are valuable only in the market ensures perpetual participation in transactional protocol. Marxism's communal focus, on the other hand, is rhetorically glossy yet logically unstable. What individuals have, the government takes; what they need, the government ostensibly gives them. At no point is human interaction necessary or even encouraged. Marx's commitment to man's communal character demands, somewhat paradoxically, a swift rejection of Marxism in favor of *market capitalism*.

Moreover, Hume was one of the first to discover the economic ineptitude that would characterize communist redistributive schemes:

Aristotle's influence in such matters was weakening. David Hume saw that the market made it possible 'to do a service to another without bearing him a real kindness' or even knowing him; or to act to the 'advantage of the public, though it be not intended for that purpose by another', by an order in which it was in the 'interest, even of bad men to act for the public good'. With such insights, the conception of a self-organizing structure began to dawn upon mankind, and has since become the basis of our understanding of all those complex orders which had, until then, appeared as miracles that could be brought about only by some super-human vision.<sup>19</sup>

Hayek sanctioned Hume's appreciation of the practice whereby individuals, stimulated by self-aggrandizement, participate in a market in which prices regulate the demands of producers and sellers. There is an automatic tendency towards market equilibrium: When prices are too high, decreased purchases diminish profits, driving prices down; when prices are too low, excess demand and under-supply raise prices. The interests of buyers and sellers fall into harmony without any puppeteer-state's ordering the process. Adam Smith's term for the market phenomenon is *Invisible Hand*.<sup>20</sup> The egalitarian measures advocated by Marxism would, as Hume said, "reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community."<sup>21</sup> Without the market to answer unanswerable questions by default, mismanagement of goods would reduce *all* to the economic lowest common denominator.

<sup>17</sup> Many scholars have noted that Hegelian Dialectical Reason (in the Marxian sense, Dialectical Materialism) did not assume the historically progressive, linear structure imposed upon it by Marx and, later, by Lenin.

<sup>18</sup> Aristotle, *Nicomachean Ethics*, trans. Martin Oswald (Upper Saddle River, NJ: Prentice Hall, 1999), 144-145.

<sup>19</sup> F.A. Hayek, *The Fatal Conceit: The Errors of Socialism*, ed. W.W. Bartley III (Chicago: The University of Chicago Press, 1988), 47.

<sup>20</sup> Adam Smith, *The Wealth of Nations* (New York: Prometheus Books, 1991).

<sup>21</sup> David Hume, *An Enquiry Concerning the Principles of Morals*, ed. Tom L. Beauchamp (Oxford: Oxford University Press, 1998), 91.

Many scholars have ignored the tendency of the market to promote the interest of all participants and, by extension, of society as a whole. In the market, beneficence and egoism are identical; selfishness and social welfare are symbionts. Grahame Thompson explained,

The objectives of consumer sovereignty, distributive justice, and community needs are...compatible with [the] market...combined ‘in a way that allows for the expression both of individual desires and of communal loyalties’.<sup>22</sup>

The self-edifying actor in the Marxist order, however, is a problem for the community because the system’s functionality stems from the acquiescence of its body politic. Marxism sees an antagonism that does not have to exist between the self-interested individual and the whole of society.

Wohlforth dubbed Marx’s framework an “evil, corrupt, dead-end system,” and noted that “the Soviet Union...graciously exited history—stage left—with hardly a whimper.”<sup>23</sup> Even China, Fukuyama maintains, has abandoned its Marxist tendencies: “Anyone familiar with the outlook and behavior of the new technocratic elite now governing China knows that Marxism and its ideological principle have become virtually irrelevant as guides to policy, and that bourgeoisie consumerism has a real meaning in that country.”<sup>24</sup> Andrew Cecil expands upon the ex parte evidence against Marxism:

After more than a half-century of experimentation, the communists cannot feed or house their people adequately. The equality they claim, on or just above the poverty line, does not satisfy the aspirations of the worker. In the same period, the well-being of millions...in the United States has greatly improved, and we are able to aid others around the globe with our goods. While capitalism may not offer an equal sharing of blessings, the inherent ‘virtue’ of communism is the equal sharing of miseries.<sup>25</sup>

The Marxist system seems both theoretically and empirically flawed from economic and political perspectives. But one of the normative drives underlying Marxism—which I will generously call *the protection of society’s least able*—has been the subject of intense debate in academia. While it is a good idea to understand the nuances of Marx’s work so you will be ready to attack Marxist positions (I have heard several of them), you should also consider in detail the work of John Rawls who, while by no means a Marxist, accepts to a great degree the egalitarian (some call compassionate) sentiment that greatly influenced Marx.

**Rawls and Nozick.** The debates between these two giants of contemporary scholarship are discussed in detail in another section of this handbook, so I will only give you the basic essentials. Rawls argues that a society should be evaluated not on the basis of its overall wealth (a very *utilitarian calculus*), but on the positions of its least-well-off members. While there are rather complex graphical representations of the economics behind this concept, it is sufficient to say that Rawls concludes that practices improving the welfare of richer social constituents are only acceptable if they simultaneously advance the mobility of the poorer members of society. He calls this condition the *difference principle*:

<sup>22</sup> Grahame Thompson, *The Political Economy of the New Right* (Boston: G.K Hall & Co., 1990), 15.

<sup>23</sup> William Wohlforth, “The Strange Death of the U.S.S.R.,” *Georgetown Journal of International Affairs* 1 (2000): 115-116.

<sup>24</sup> Francis Fukuyama, “The End of History,” *The National Interest* 16 (1989): 10.

<sup>25</sup> Andrew R. Cecil, *The Third Way: Enlightened Capitalism and the Search for a New Social Order* (Dallas: The University of Texas Press, 1980), 74.



This [difference] principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as a part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.<sup>26</sup>

Additionally, Rawls constructs a *veil of ignorance* as a practical safeguard to prevent contingent elements or subjective influences from infecting due process:

Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.<sup>27</sup>

Rawls proceeds to endorse economic schemes marked by intense redistribution of wealth in favor of the poorer citizens who cannot compete in the market. If you are interested in his work (which you should be, since both the difference principle and the veil of ignorance are persuasive, commonly used criteria), you should at least read A Theory of Justice and Mr. Foell's section of this handbook. While I leave it to you to discover the particulars, I suggest that criticisms of Rawls' work begin by questioning the practical reasonability of the veil of ignorance. Can individuals really subdue the subjective proclivities that mark their thoughts and actions? To defend Rawls, consider the helplessness of those failed by capitalism and, more importantly, whether or not a just system would let its own constituents suffer financial depression.

Robert Nozick, one of Rawls' theory's chief critics, advanced forceful arguments about the justness of forced, financial redistribution. Nozick's liberal utopia is one ruled by a *minimal state* with limited obligations and influence. For Nozick, the state does not have *positive obligations* to meet the wants of its people because the government is founded to protect rights and, for example, nobody has a "right" to own a Porsche. The state is limited, however, by *negative obligations* to avoid unnecessary, unjustified limitations of individual liberty. For Nozick, the prospect of forced redistribution (taxation of the rich, for example, that ends up as transfer payments to others) for some overarching *social good* reeks of injustice:

There is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people...with their own individual lives. Using one of these people for the benefit of others uses him and benefits the others. Nothing more....He does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him...talk of an overall social good covers this up.<sup>28</sup>

Nozick built upon *Locke's conception of property rights*, which maintains that individuals have just claims to the goods they produce because the decision to toil is an autonomous function of human rationality. Therefore, produce itself is a derivation of individual rationality, and nobody has the right to

<sup>26</sup> John Rawls, *A Theory of Justice* (Cambridge, Mass: Harvard University Press, 1971), 74-75.

<sup>27</sup> *Ibid.*, 136-137.

<sup>28</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Perseus Books, 1974), 32-33.

strip a person of his rational autonomy. Further, there is something intuitively appealing about the notion that private property, whether or not it is an extension of rationality, is a sacred right to be protected; what's mine is mine, and nobody else's. Furthermore, the exchange of freely (and, by extension, justly) acquired goods is an element of human freedom. Transactions by mutual consent are, by nature, just; and these are the only exchanges permitted in the market. If the string of such transactions that constitutes the daily operation of the market results in social inequalities, it is impossible to suggest that someone has done something unjust or immoral since only just transactions are protected. Taxation therefore punishes a market participant for a social result for which he is not directly responsible; after all, the inegalitarian conditions resulting from capitalism stem from an aggregate of just interactions.

Now I shall consider *Kantian criteria determining justice* (in particular, *distributive justice*). From this work, you should be able to easily derive a dozen or so criteria; and you should take this explanation not as exclusively concerned with distributive justice, but also as a general explication of Kantian justice and the complicated Kantian social contract.

Kant's conception of property rights and his consequent derivation of contractual governance further bolster the capitalist's initiative. For Kant, there exists a legitimate claim to *original acquisition*. Kant's system of private property operates from the assumption that individuals in the initial state of affairs share ownership of social goods. This collectivism is not forged via contract "since that would presuppose that individuals already possessed private property rights...and already entered civil society."<sup>29</sup>

Kant explains that the once-social property is partitioned according to the mutual agreement of society's inhabitants; thus arises private property. According to Kant, the emergence of property obligates citizens to forge the state: "If there were not even provisional property in the state of nature...there would be...no command to quit the state of nature."<sup>30</sup> The mission of statesmanship is *the institutionalization of provisional property*—the systematic assurance that what is one's by right is not unjustly taken by another. The social contract is the glue bonding the government and the governed, whereby the latter sacrifice particular claims (e.g., the claim to criminal transgression) in exchange for protection of legitimate claims (e.g., the right to own private property).<sup>31</sup> Baynes clarifies the concept of the Kantian state:

The notion of an original, common ownership is a necessary presupposition for the possibility of property rights; without it no obligations regarding property could arise, including the most basic obligation to enter into a civil society. For this reason Kant calls the notion of an original community of common ownership 'an idea that has objective reality'.<sup>32</sup>

The obvious question concerns the restrictions incumbent upon government: When can the state coerce its members? Kant's answer expectedly points to both freedom and consent:

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<sup>29</sup> Kenneth Baynes, *The Normative Grounds of Social Criticism: Kant, Rawls, Habermas* (New York: State University of New York Press, 1992), 37.

<sup>30</sup> *Ibid.*, 37-38.

<sup>31</sup> Note the distinctions between three popular social contracts. For Hobbes, government was not only sovereign, it's authority was absolute and unwavering. The Kantian and Lockean models, however, stressed political liberalism and the minimal state; and charged the government with the responsibility to compel only when freedom was at stake. Locke and Kant differ insofar as Locke accepted popular rebellion in response to governmental illegitimacy while Kant did not.

<sup>32</sup> Immanuel Kant, *Metaphysik der Sitten* (Hamburg: Meiner, 1966), 251.

My external and rightful freedom should be defined as a warrant to obey no external laws except those to which I have been able to give my own consent. Similarly...equality within a state is that relationship among citizens whereby no one can put anyone else under a legal obligation without submitting simultaneously to a law which requires that he can himself be put under the same kind of obligation by the other person.<sup>33</sup>

***Kant's Doctrine of Right*** sees the just state as one that (1) passes legislation consented to by her citizenry and (2) treats citizens as equals before the law. That is, the legitimate government neither effects tyrannical legislation nor treats individuals with partiality. Two further conditions must be established to demystify Kantian economics, if such a science indeed exists. The first is derived from the above observations concerning the state: Coercive, governmental compulsion is only justified, for Kant, when the supremacy of freedom requires it. In other words, the state is only just in limiting one's freedom when one unjustly abridges another's freedom:

If a certain use of freedom is itself a hindrance to freedom according to universal laws, then the use of coercion to counteract it, inasmuch as it is the prevention of a hindrance to freedom, is consistent with freedom according to universal laws; in other words, this use of coercion is just.<sup>34</sup>

Such regulation is by consent and can be applied with parity, thus meeting Kant's two criteria for just governance. The second requisite is that property rights are inextricably integrated with freedom:

If I am the holder of a thing, then anyone who touches it without my consent (for example, wrests an apple from my hand) affects and diminishes that which is internally mine (my freedom). Consequently, the maxim of his action stands in direct contradiction to the axiom of justice.<sup>35</sup>

Thus, external property, institutionalized through the social contract, confers the internal condition of *freedom* to its owner. One's property is his only if he enjoys the freedom to use it, and infractions of the rules governing private property are reprehensible because they desecrate the freedom of the original holder of title.<sup>36</sup>

Now one can derive a ***Kantian position vis-à-vis distributive justice***. First, since the state that redistributes in accordance with need compels compliance in the absence of any violation of freedom, it pierces the boundaries of its own legitimacy. Since the contents of one's bank account do not directly impinge upon the freedom of others, the state is never justified in seizing assets. Second, the Kantian criteria for just statism do not include provisions for the promotion of positive rights. The state is obligated to protect the negative rights of her founders, but it is not burdened with the duty to facilitate patrons' positive claims. Allen Buchanan concurs that "individuals only have a right to noninterference

<sup>33</sup> Immanuel Kant, *Kant's Political Writings*, trans. H.B. Nisbet, ed. H. Reiss (Cambridge: Cambridge University Press, 1975), 125.

<sup>34</sup> Kant, *Metaphysik der Sitten*, 231.

<sup>35</sup> *Ibid.*, 250.

<sup>36</sup> Many draw a problematic parallel between Kantian property rights and Lockean property rights. The former stresses the continuous relation of freedom to property. One's property is valuable insofar as one who possesses property is free to use it. For the latter, however, property is the result of, and is not coexistent with, freedom. For Locke, one's property belongs to him since it is the result of his labor, and is consequently derived from his autonomous rationality. Lockean property results from, but does not confer, freedom.

with what is their property...no one has a right to positive aid.”<sup>37</sup> Finally, since the freedom to make decisions concerning one’s assets is relevant only when one has possession of his assets, compulsory redistribution of one’s finances unjustly violates his freedom. It has been shown that the Marxist state not only transgresses its boundaries as defined by Kant, but it also acts in a positively unjust manner when it limits the conditions necessary for individual freedom vis-à-vis property.

A Kantian approach, centering on the virtue of *contract*, adds yet another weapon to the capitalist’s Marx-indicting arsenal. Initially, since “Kant’s theory of justice is constructivist, not teleological,” the communists’ claim that their actions are justified because of their egalitarian aims is delusive.<sup>38</sup> That approach, however, merely erodes the Marxist’s claim to justice; it does not demonstrate the injustice endemic to the Marxist condition. To prove such, one must recall that, for Kant, “exchange arises through agreement”; transfers of property are only just when the conditions of mutual consent are present.<sup>39</sup> If the buyer wants to buy, and the seller wants to sell, the transaction is a just one. The market economy only protects such transactions; an involuntary transaction, like theft, is met punitively. Under capitalism, C.E.O.s consensually agree to merge their companies, tenants and landlords agree to the conditions of rent, and workers agree to work for a specific wage rate. By contract, “[one] acquires another’s promise.”<sup>40</sup> A Marxist revolution would, for Kant, be unjust since workers consent to their wages:

Workers *voluntarily* make contracts with employers, and, more generally, so long as all exchanges are voluntary, no one is treated as a mere means...To *coerce* a person is to treat him as a mere means.<sup>41</sup>

Finally, it is questionable whether or not funds forcibly redistributed constitute moral donations:

Strict justice is...founded on the consciousness of each person’s obligation under the law; but, if it is to remain pure, this consciousness may not and cannot be invoked as an incentive in order to determine the will to act in accordance with it.<sup>42</sup>

Compulsory, legislated charity would mark the heteronomous acquiescence of the subject to his government; and would not reflect his autonomy. Such coerced actions are never in accord with Kantian morality since the requisite freedom is absent.

From this discussion of distributive justice, you should understand the basics of the Marxist critique, the essential tensions between the works of Rawls and Nozick, and the Kantian conception of property rights, justice, and the social contract. This should give you excellent groundwork for any topic concerning economics, and the work on Kant in particular applies to any topic involving justice and the social contract.

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<sup>37</sup> Allen Buchanan, *Ethics, Efficiency, and the Market* (Totowa, NJ: Robman & Allanheld, 1985), 70.

<sup>38</sup> Baynes, *The Normative Grounds of Social Criticism: Kant, Rawls, Habermas*, 29.

<sup>39</sup> *Ibid.*, 36.

<sup>40</sup> Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 54.

<sup>41</sup> Buchanan, *Ethics, Efficiency, and the Market*, 88.

<sup>42</sup> Kant, *Metaphysik der Sitten*, 232.

## II. Standards Concerning Individual Decisions, Actions, and Morality

### The Relationship Between Freedom and Morality

**Freedom as requisite to morality.** For Kant in particular, individuals who act under the active compulsion of a governing body do not act freely, but under the imposing force of coercion. *Resistance to coercion* or what Kant calls *heteronomy of the will* is essential should morality thrive.

This is the basis for the assumption of objective morality mentioned in our discussion of international relations. While it is true that there is no tangible Dao explaining True morality in real terms, we must act “as if” there are some objective laws for mere practical reasons. The logical extension of the relativist position is that laws are immoral since they represent the imposition of certain individuals’ normative schemes upon other, non-assenting subjects. Of course, accepting this perspective yields unbridled freedom, and society returns to the Hobbesian state of nature in which freedom is perennially threatened. If protecting the right to fashion subjective moral beliefs is important, it makes sense that humanity converge in its acceptance of *the protection of autonomy* and *the protection of life* as a governing standard. Otherwise, subjective moral determination, and morality in general, cannot exist. You will undoubtedly encounter debaters who claim that there are no viable criteria for morality since morality is subjective. Here are some of my favorite answers to that argument:

- The relativist position is internally inconsistent. Its essential claim is that objective morality is not demonstrable or does not exist, so it is wrong to impose moral conceptions. However, by making a normative statement about the way things should be (namely, by suggesting that morality *ought not* be enforced), the relativist effectively commits the immorality his argument explicitly rejects.
- Even if morality is veritably subjective, nations and individuals must assert their moral standards. If we have moral beliefs, we have to act on them; otherwise, they’re trivial. Moral autonomy is an important element of individual self-determination and authenticity; so even subjective morality has its place in human affairs.
- By attempting to ban moral statements, the negative justifies horrid crimes like genocide by preventing nations from asserting their subjective morality against such evils. If the choice is between imposing morality and stopping genocide, I think it’s intuitive that moral nations opt for the former. The logic justifying this intuition is that, if life is not preserved, morality cannot exist since life is a prerequisite for moral decision. Therefore, the protection of life is an objective standard of morality since the latter relies entirely upon the former.
- The resolution asks the judge to select the affirmative or the negative depending on what *should* be the case. Therefore, the resolution asks a normative question about morality. By extension, even if morality is subjective, the resolution forces the adoption of a moral standard.

Additional reading will yield a smorgasbord of rejoinders to the subjectivist claim, but the above list should get you started.

**Existentialism.** Without spending too much time on this important subject, I must at least point out that there are excellent existential criteria determining morality. Before this discussion, it must be understood that there is no existential objective morality. In fact, the founding principle of *existentialism* is that humans are alone in the world without the obvious guidance of any superior being. In my view, existentialism is a dismal, depressing philosophy, but it is also one that is practically useful for angst-ridden humans who simply do not know what to do with their lives.

Martin Heidegger argued that life is a futile endeavor because mankind has no assigned direction. The only experience known by humans is what Jean Paul Sartre called *anguish*, which refers to the total freedom of choice that confronts each of us. At this very moment, I can slam-closed my laptop and jump out of the window. Or, perhaps, I should throw my glass on the floor. Or maybe not. Maybe I should turn the lights off-and-on repeatedly until my death. For Heidegger and Sartre, freedom is infinite because there is no observable phenomenon telling humans what decisions they should take. The only thing we can do to derive meaning from our existence is encounter anguish—make a decision, albeit one with no inherent moral direction—and stick to it steadfastly. From this commitment, humans derive *authenticity* by identifying themselves as a follower of whatever course of action they selected in their meeting with anguish. Hence the existential maxim that *existence precedes essence*: Humans have no inherent essence that characterizes their ontological status. Instead, the essence of being is defined externally by the actions (existence) individuals take in response to anguish.

The point is that, without freedom, humans cannot encounter anguish, and therefore are unable to derive existential authenticity. If the existentialists are correct that this liberal encounter with anguish is the only possible way to add meaning to an otherwise fruitless life, than apparatuses that restrict freedom are particularly problematic as they relegate life to a futile endeavor. One of the most persuasive LD cases I've ever heard (it happens to be the product of Chad Bush, a Victory Briefs staff member) valued freedom through a criterion of anguish. That particularly nasty case drew a theory critique about the combined use of complicated philosophy and speed in Lincoln Douglas debate (from Steve Davis, yet another member of the VB team).

The upshot is that this knowledge will serve you well. Of course, this is a very limited vision of existentialism. Sartre's *Being and Nothingness* and Heidegger's *Being and Time* are the two longest, most difficult reads I've laid eyes on. Still, for the ambitious, study of existentialism will prove infinitely rewarding. For the truly daring, check out Soren Kierkegaard's writings on Christianity, in which the famous but complex idea that "subjectivity is truth" is persuasively developed. The moment a resolution concerning religion appears, I promise to fill you in.

### Deontological and Teleological Criteria for Morality

**Deontology.** *Deontological morality* refers to duty-based morality. Deontologists hold that morality is not determined by any social outcome, like increasing social welfare, fairly distributing goods, or effecting national security. While those are certainly estimable ideals not to be overlooked, morality depends not upon the mundane results of actions, but on the intentions motivating those actions. For the deontologist, action is not morality's catalyst; that role belongs to the *recognition of and adherence to duty*.

This duty is difficult to unpack, however. Debaters and even instructors some summer institutes misunderstand deontology to mean "means-based," or means-justify-ends morality. That conception is plainly wrong since duty is the stuff of deontological morality; the means employed by adherents to duty are generally irrelevant. Immanuel Kant, who attempted to actually ground morality in pure reason, advanced the most comprehensive scheme of deontology. His writing is complex, but his work is refreshing, optimistic, and has driven the academic community bananas since its embryonic stages. Kant's Grounding of the Metaphysics of Morals is required reading for debaters.

**The Categorical Imperative.** *The Categorical Imperative* is one of those criteria that, like the social contract, appears topic after topic, regardless of how detached from Kantian morality the resolution is. The categorical imperative is a rather simple rule, and one of the very few that I try to stick to myself.

Kant distinguished between *hypothetical* and *categorical* imperatives:

*A hypothetical imperative...says only that an action is good for some purpose...A categorical imperative...declares an action to be of itself objectively necessary without reference to any purpose.*<sup>43</sup>

It is thus incontrovertible that Kant's plans for grounded morality are deontological rather than teleological (ends-based). The categorical imperative—Kant's supreme, moral ordinance—bids agents to “never act except in such a way that [one] can also will that [his] maxim should become a universal law.”<sup>44</sup>

Hegelian *Phenomenology* objects, however, that

it is impossible to discover one's moral duty simply by analyzing abstract principles to see if they are universal and noncontradictory...both private property and its opposite—common ownership—are equally universalizable and noncontradictory.<sup>45</sup>

Kant, preempting Hegel's concern, annexed the *practical imperative*:

***act in such a way that you always treat humanity whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.***<sup>46</sup>

Kant's reconditioned imperative gives the agent an undeniably lucid, operative rule that effectively operates in almost any LD resolution. Too many debaters read the noble standard to mean that individuals should never be treated as means. A careful reading of the text reveals, however, that it is morally acceptable, for Kant, to treat moral agents as means to an end provided that the ends are inclusive of that person's interests. For example, perhaps capitalists are morally justified in their advocacies because, while the poor are arguably treated as means, they are included in a more economically prosperous society in the end. Or, conversely, maybe taxation is justified because taxpayers, who are quite clearly used as means to social ends, are included in the kingdom of ends. Of course, if you're sharp enough to build the logical groundwork for the categorical imperative, you'll have a virtual proof (certainly, a rigorous suggestion) that there is at least one objective moral tenet at play in international relations (and in other areas of analysis, of course).

It should be fairly obvious where the categorical imperative falls in LD positions. The standard is a perfect example of the compound criterion discussed in my other article in this handbook. To meet the standard, individuals must not violate rights unless the ends derived from the transgression benefit the victim. I encourage you to learn more about Kant's thought before running the categorical imperative superficially. Read the *Groundwork* carefully, and don't skip sections that you don't understand—seek help from your peers, from teachers, from the library, or on the web. I have not heard a philosophy so misunderstood and abused by debaters as Kant's, and that's a shame since societies have so much to learn about his work.

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<sup>43</sup> Ibid., 25.

<sup>44</sup> Ibid., 14.

<sup>45</sup> G. W. F. Hegel, *Phenomenology of Spirit*, trans. A. V. Miller (Oxford: Oxford University Press, 1978), 257-261.

<sup>46</sup> Kant, *Grounding for the Metaphysics of Morals*, 36.

**Utilitarianism.** If Kant's work is the most misapprehended by LD debaters, utilitarian morality is a close second. *Utilitarianism* is a framework in which morality is defined *teleologically*, or by virtue of some material ends generated by the morally evaluated action. Many debaters accept the standard, Benthamite conception of utilitarianism as "the greatest good for the greatest number," but that definition is deceptively superficial.

In particular, David Hume's rather unique breed of utilitarianism is worth detailed study. *Hume's utilitarianism* begins from the assumption that rationality cannot, contrary to the Kantian proclamation, determine morality. Hume was a skeptic; after all, who's to say that human reason is a reasonable system? Hume even challenged Descartes proof of human existence that "*cogito ergo sum*" (I think therefore I am) by suggesting that, if Descartes were not, he would be unable to think; and he cannot prove that he exists to think. In other words, Hume agrees that, if Descartes thinks, then he exists; but he questions Descartes' founding assumption that he thinks in the first place.

Since humans cannot appeal to rationality to determine morality, they must turn to their senses. Humans have an intuition regarding morally worthy conditions and deeds, Hume contended. The material verification of that intuition examines relationship between actions and the social effects they produce. An action is moral, for Hume, if it is socially useful. For example, egoism is never socially useful, and is therefore immoral. On the other hand, benevolence is always socially useful, and is the purest moral virtue. Even justice, said Hume, is a contrivance only worthy because of its social utility:

We are naturally partial to ourselves, and to our friends; but are capable of learning the advantage resulting from a more equitable conduct. Few enjoyments are given us from the open and liberal hand of nature; but by art, labour, and industry, we can extract them in great abundance. Hence the ideas of property become necessary in all civil society: Hence justice derives its usefulness to the public: And hence alone arises its merit and moral obligation.<sup>47</sup>

Justice is only valuable because it is a socially useful construct that is particularly helpful at arranging the hands societies are all dealt. In particular, the right to private property is socially useful because it catalyzes creative ingenuities that would not otherwise be excited, which results in the production of socially useful goods. Justice is, in turn, socially useful because it secures property rights.

It should be clear that utilitarianism is not merely the greatest good for the greatest number. Were that description accurate, attacks like "utilitarianism justifies feeding Christians to lions if the majority wills it" would be on-point. But utilitarianism is a particularly viable LD criterion because it regulates what sorts of actions determine morality in a very real, social context. One can persuasively argue that criteria like the categorical imperative, the protection of rights, and governmental legitimacy are, while appealing, substantiated only by metaphysical logic that might not conform to experience. The only truths of which individuals can be certain are those that confront the senses head-on; and the best standards of morality regard that incontrovertible standard. Utilitarianism is, perhaps, the best determinate of morality since it mediates the relationship between actions and their social effects, which are determinable via the senses. Obviously, this standard can be applied to almost any LD topic (in fact, I cannot think of a topic that excludes utilitarianism from consideration).

I hope this overview has been helpful. I apologize for the onslaught of information, and also for the lack of depth in certain areas. The function of this "around the world" piece is the introduction of the most fundamental criteria of justification vis-à-vis justice and morality. The other sections in this work will

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<sup>47</sup> Ibid., 86-87.



explain many of these standards in greater detail, and the Victory Briefs topic handbooks will exhaust the relevant standards that apply to various resolutions.

In no instance should you limit your research and in-case analysis of any criterion to the preliminary information provided in this article. These are merely introductions, and I have simplified many topics that absolutely must be researched further by the conscientious debater.

I hope you have found this article informative, interesting, and potentially helpful; and I wish you the best of luck throughout the 2001-2002 tournament season.

# STANDARDS FOR JUSTICE

by James Scott

Justice: it's the catch all value in Lincoln-Douglas debate, oft used and oft abused. My goal here is to clarify much of the confusion surrounding exactly what justice is and what it isn't. I also intend to introduce some strategies for winning rounds when various aspects of justice come into play. Remember, this is first and foremost a criteria handbook, so I'll focus on standards that you can use in different situations. Right off the bat, though, it's important to get an idea of when you should even choose justice as your value. It's a much simpler question than it sounds, so let's begin there.

Morality should be used when the issue at hand concerns individual choices, whereas justice is an appropriate value for resolutions dealing with political or legal issues. Some of the topics on which I personally used justice as a value were the ones concerning capital punishment, violent juvenile crime, capitalism and socialism, shielding of confidential sources, and civil disobedience. Judging from that list alone, it's obvious that justice is quite versatile, which undoubtedly accounts for its status as Lincoln-Douglas debate's most popular value.

Versatile - well, at least, that's the party line on justice. Truth be told, justice isn't nearly so powerful a notion without specific criteria dealing with a specific theory of justice. While the same general principles may underpin Nozick's minimal state and Kant's belief in proportional retribution for criminal offenses, as always the devil is in the details.

## I. General Themes

Before I get to those details, however, I do think it's necessary to cover some overarching themes that are common to virtually all theories of justice. The Encyclopedia of Philosophy gives a fairly good explanation of these general features:

Although justice is sometimes used as a synonym for "law" or "lawfulness," it has a broader sense, closer to fairness. Questions of justice, according to Hume, Mill, and others, presuppose conflicts of interest; there would be no point in talking about justice, according to Hume, but for the limitations of human benevolence and the competition for scarce goods. Justice presupposes people pressing claims and justifying them by rules or standards. This distinguishes it from charity, benevolence, or generosity. No one can claim alms or gifts as a right. However, although this account is appropriate to questions of distributive justice, where the problem to allocate benefits, it is not so obviously true of corrective (or retributive) justice. It is farfetched to describe a criminal trial as a conflict between an accused man's interest in being let alone and the community's interest in punishing him. Nevertheless, sentencing criminals and giving judgment in favor of one party to a dispute rather than another have this in common with distribution - that they all may involve overriding a claim and treating one person more harshly than another. All presuppose general principles by which such distinctions are regulated and justified.

-- The Encyclopedia of Philosophy, Volume 4. Paul Edwards, editor. "Justice."  
MacMillan Publishing: New York, 1967

This is a much more comprehensive and informative version of the standard LD definition of justice as fairness, giving each man his due, the balancing of competing claims, or some other such sound bite. Now, onto a few other issues common to all theories of justice.

## A. Obligation, Desert, and the Notion of Rights

Virtually everyone, LD debater or not, should be familiar with the concept of an obligation. We have many, many obligations in our everyday lives. As students, we are obligated to go to school and to behave respectfully while we're in the classroom. As motorists we have an obligation to follow the traffic laws. As American citizens we are obligated to pay taxes. These are all legal obligations, and the list of them obviously goes on and on.

Legal obligations are extremely clear-cut because the government specifically enumerates them in the form of the laws it enacts. Unfortunately, other obligations are much more ambiguous. For example, am I obligated to act respectfully towards my grandmother? Am I obligated to assist a drowning person who can't swim? Most people would answer yes to both of these questions... but why? There aren't really any laws governing my behavior in those circumstances, yet we nonetheless feel compelled to act in a certain "acceptable" way. These fall into the realm of moral obligations, and as a result this section isn't really concerned with them. I merely present them to demonstrate that most obligations aren't so straightforward as legal duties.

Let's return now to the arena of governmental action and consider the issue of taxing those with money to provide a social safety net for those without it. Some thinkers, such as John Locke and Robert Nozick, believe that the government has a duty to protect the property rights of its citizens and that the "welfare state" (as it has come to be known) is unjust. Others like John Rawls and Ronald Dworkin believe that the government is obligated to provide basic necessities to those who cannot, for whatever reason, provide for themselves. Regardless of whether you fall on the left or right of center on this particular issue, it is undeniable that both sides assert that the government has a particular obligation in conflict with the one asserted by the other side.

Where do obligations come from? Aristotle asserts that justice means treating equals equally and unequals unequally in direct proportion to their relative state of inequality. That certainly sounds reasonable, but when push comes to shove, how would you argue for that standard in a round? The Encyclopedia of Philosophy again gives two answers. Keep in mind that these are generalizations. Check out the later sections on political and legal theories of justice for analysis on more specific obligations pertaining to those realms.

First, obligations come from the concept of reciprocity:

John Rawls has argued that we are rationally committed to acting justly by our very positions as persons engaged with others in joint practices designed to promote common or complementary interests. We cannot reasonably expect other people to respect our interests unless we are prepared to respect theirs, and, as Leibniz put it, a man has grounds for complaint if, should you refuse to do something he asks you to do, he can judge that you would have made the same request in his place. The duty of justice, or fair dealing, according to Rawls, would emerge, from the reciprocal recognition by a community of rational egoists that they had similar (and competing) interests and that no one would count on getting his way against all the rest.  
-- The Encyclopedia of Philosophy, Volume 4. Paul Edwards, editor. "Justice."  
MacMillan Publishing: New York, 1967

Secondly, obligations derive from a rejection of solipsism. To give a brutal simplification, solipsism is the belief that it is impossible to verify that the external world exists outside your mind or that other people even share the same experience of consciousness that you do. See The Matrix for clarification.

The point is that once we recognize the possibility that the other people with whom we interact on a daily basis are sentient beings, then we will also recognize a duty towards them:

A somewhat similar argument, but couched in a transcendental form, is offered by del Vecchio. Consciousness of oneself as a subject of experience implies, according to del Vecchio, the awareness (and therefore the existence) of objects of experience ("not-self"), but it implies, too, the possibility that one is oneself the object of experience of other experiencing subject. The very fact of consciousness implies at least the possibility of someone besides oneself who could be a subject of claims.  
-- The Encyclopedia of Philosophy, Volume 4. Paul Edwards, editor. "Justice."  
MacMillan Publishing: New York, 1967

This is a good time for me to introduce the term desert (which is pronounced "duh-zert," as in "We are having chocolate cream pie for dessert"). Desert, as I understand the term, is a variation on the word "deserve" and refers to what somebody is due. People frequently speak of "just deserts," and they simply mean what someone deserves in the name of justice (or in the name of morality, if they talk about moral deserts). For Nozick, my just desert is governmental protection for my right to own and dispose of my private property as I see fit. For Rawls, my just desert is governmental provision of basic necessities in case I become destitute. You should be able to see here that obligation and desert are two sides of the same coin: where there is an obligation, there is also a desert. If grandsons are obligated to respect their grandmothers, then a grandmother's moral desert is respect from her grandson. Similarly, if the government is obligated to give me bread and circuses, then bread and circuses comprise my just deserts.

Desert is often used synonymously with the term "right" (as in the right to a fair trial, not as in right of center). A right, more specifically, is an entitlement or privilege to perform certain actions or to have certain actions not performed on you. More often than not, both descriptions apply to the same right. Take the right to free speech, for example. The current interpretation of the First Amendment holds that people must be permitted to perform a certain action (speaking freely), and that they must not have certain actions performed on them (censorship or prior restraint).

So what is the difference, then, between a right and a desert? The distinction seems to have been lost in a lot of modern discourse, but I believe we can find a reasonable guideline by differentiating between acts and things. A right involves the granting of permission for you to commit specific, enumerable acts, and the denial of permission for other people to commit specific acts upon you. A desert, on the other hand, involves things, whether abstract (like respect and love) or material (like food, shelter, and clothing). I realize that distinction is a little bit muddy around the edges, but it at least gives you an idea of why rights and deserts are not necessarily synonymous.

## B. The Individual vs. Society

This is THE conflict in LD debate; it's embodied somehow or another in a veritable cornucopia of resolutions spanning many different issues. Often, it seems appropriate to use "protecting individual rights," or something similar, as a criterion on one side of a resolution, and a criterion like "the interests of society" on the other side. For example, consider the January/February resolution from 1999 ("Resolved: In the United States, a journalist's right to shield confidential sources ought to be protected by the First Amendment"). Many affirmatives argued in favor of society's interest in having a vibrant, vigorous media to inform the public and blow the whistle on injustices. Negatives countered that the individual's right to due process implied that journalists ought to be forced to disclose their sources when their testimony could affect the outcome of a trial. What criteria could you use to help resolve this conflict in

your favor? Well, keeping in mind that context is very important and will give you much more insight on good arguments to use, here are some general warrants for both sides.

When arguing for a criterion of individual rights, it's important to stress why we consider certain privileges to be rights in the first place. Rights are NOT utilitarian constructs - rather, we give people rights IN SPITE OF whatever utility those rights may or may not produce. The right to free speech, for example, is only meaningful if it is to protect unpopular and even anti-utilitarian speech, like seditious comments against the government or hateful invectives against minority groups. If we only wanted the right to free speech to cover the so-called "valuable" speech, the discourse that is overtly beneficial to society or culture, then there would be no need to consider it as a right. Society would simply allow me to speak because my doing so would be beneficial. But that's not the way it works. We recognize speech as a right because the expression of opinion is fundamental to one's concept of selfhood, and to deny that would be blatantly dehumanizing. It follows that the individual's right to free speech ought to be protected ESPECIALLY when it threatens the interest of society. Otherwise, it ceases to become a right. I would also argue that the same is true for all rights. They are only valuable when they protect us against the interests of society, so they must take precedence over those interests if they are not to be utterly trivialized.

In other words, if you're arguing that society's interests ought not trump individual rights, you will need to give a deontological (or non-utilitarian) justification for the existence of those rights. A reasoned, logical appeal to human dignity, self-ownership, the sanctity of life, or some other first principle will generally provide the kind of warrant you're after. Why? Well, I can think of two reasons. First of all, you can make the above argument that considerations of utility should not trump a right that exists specifically to protect the exercise of an anti-utilitarian privilege. But perhaps more importantly, a deontological justification for rights is strategically superior to a rule-utilitarian justification for the same right because your opponent will have a much more difficult time putting a turn on your arguments. [There are at least two types of turns. An "impact turn" is a specific type of response in which you agree that the impacts of an argument will indeed occur, but you then proceed to demonstrate why those impacts are good (if your opponent claims they are bad) or bad (if your opponent claims they are good). A "link turn" claims that the position your opponent is defending will actually lead to impacts that are different from the ones he argues in his case.] Please see the free speech stuff below for a good example of what I'm talking about.

When you're on the other side of the coin and need to defend society's interests when they conflict with individual rights, your best strategy is to force your opponent to justify why those rights exist in the first place. In my experience, they often won't be able to do so and will end up looking foolish. This is, quite obviously, a good thing for you. This can be done a couple of ways. The most direct way is to play the "why" game with your opponent during CX. Start off by asking why people ought to have the rights your opponent claims they ought to. You're hoping to coax out of your opponent a rule-utilitarian justification for those rights, because this will make your job much easier. To illustrate, let's continue with the example of the right to free speech. Imagine you are defending restrictions upon hate speech on college campuses (as debaters in the 2000 season had to do), and your opponent is arguing that the right to free speech should not be trumped. You should ask him in CX why people have a right to free speech. Imagine for a moment that he gives the standard John Stuart Mill, "marketplace of ideas" justification - that people ought to be allowed to speak freely because uninhibited discourse will cause Truth to triumph over Falsity. This is a rule-utilitarian argument. It posits that the right to free speech exists not because it is among the inherent deserts that human beings are due, but rather because giving people the right will eventually produce an outcome that society deems desirable.

If you stop to think about it, you've just accomplished something very important and put yourself in a strategically advantageous position. You've disarmed your opponent's arguments about rights by turning them into nothing more than utilitarian impacts that can then be mitigated, turned, and weighed with the

other impacts you've presented on the flow. Those arguments, of course, will be topic-specific and I can't really help you with them, but the bottom line is that your opponent's case no longer is invested with the seemingly magical appeal of individual rights. If the only warrant behind a right is utility, and you prove that utility is better upheld on your side of the resolution, then you've just won the round.

However, if your probing during CX eventually leads you to one of the first principles (life, dignity, etc.) I listed above, your opponent has his or her ducks in a row and you will actually have to work. Once you hit a first principle, ask your opponent very simply if he can explain why we ought to value that first principle. This would normally be a very insipid question, but right now you're just testing your opponent's wherewithal. Ideally, he will stumble over himself in a broken attempt to justify why human beings possess intrinsic dignity (you try it - it's damn tough). This can only make you look good. If your opponent is smart, the worst that can happen is that he will say something like, "Look, both of us know that certain assumptions are necessary for any reasonable debate to take place. If you want to dispute that human dignity is valuable, then you're welcome to. But I feel safe in openly assuming it to be a fundamental principle for moral action that needs no independent justification." (My personal favorite response to questions of that sort was "For me, dignity is just an assumption. After all, humans can't even do mathematics without axioms, and you expect us to do morality that way?" But that's just me.)

If that happens, press no further during CX and move onto your other questions. Then in your next speech (either the NC or the 1AR), you need to do three things to resolve the criteria debate. First, dispute the deontological justification given for the right in question (in our example, free speech). A good strategy here might be to argue that such an all-or-nothing position based upon a first principle admits of no compromise. Point out that your opponent's concept of a right doesn't allow for any kinds of restrictions on individual rights, even reasonable ones, and is therefore immediately suspect.

Secondly, you need to give an alternative justification for why that right exists - and make it a rule-utilitarian justification for the reasons I gave above about turning and weighing impacts. Now, I realize that it may seem counter-intuitive to give a justification for a right that you are arguing ought to be trumped. But it's important to realize that the judge is going to want to hear a complete story, and one of the questions they are going to want answered is "Why do people have this right to begin with?" If you simply explain away your opponent's deontological justification for a right without giving your rule-utilitarian alternative, you will seem unreasonable. The judge will think you are denying that the right in question even exists, and this will make them wary of voting for you. By denying them an alternative warrant (one that serves your overall strategy) for the right, you force the judge into choosing between the existence or nonexistence of a right. Chances are, you will lose. If instead you explain that the rights exist for a certain reason, and that the reason supports your position, you will sound much more sensible than your opponent, who will be arguing for an absolute. (That's always a good strategy - to make your opponent seem dogmatic and to make yourself seem like the voice of reason).

Thirdly, once you've given a rule-utilitarian justification for the right in question, then do the same thing I advised you to do earlier - turn, mitigate, or outweigh the impacts with utilitarian arguments of your own.

I'm sure this strategy seems very complex in the abstract, but in practice it's quite simple. For instance, here's the story I would give on our free speech example if I were the affirmative upholding hate speech codes: The negative argues that the right to free speech is derived from my inherent worth as a person. But if free speech is essential to dignity, and dignity can't be transgressed, it follows that free speech must be absolute. That's ludicrous - there are always time, place, and manner restrictions on speech, and people shouldn't be free, for example, to make death threats or use sexually harassing speech in the workplace (that's step 1). I'd argue instead that the right to free speech exists because of utilitarian considerations. As Mill pointed out, we allow people to speak freely because doing so promotes the ascendancy of truth over error, which is good for society because it allows the advancement of technology

and culture (that's step 2). However, remember my argument that hateful attitudes towards minorities on college campuses actually deter those minorities from speaking their minds on important issues. So voting negative actually chills discourse, which turns the free speech argument (and that's step 3). That takes between 30 seconds and a minute, depending on how many turns and impacts you offer, and you've gone a long way towards winning the criteria debate.

So now you see the strategy in action. When arguing in favor of society's interests over individual rights, follow that simple three-step strategy: indict the deontological justification for rights given by your opponent, briefly give an alternative rule-utilitarian justification, and then win the debate with superior impacts. If you're facing this kind of challenge, it's important that you be prepared to explain why your deontological argument is indeed a good justification for the rights in question, or to concede to the rule-utilitarian interpretation your opponent gives and then win the impact battle yourself.

### C. Positive vs. Negative

Now it's time to make the distinction between positive and negative obligations. A positive duty obligates me to do something, whereas a negative duty obligates me not to do something. The duty to pay taxes is positive, while the duty not to steal from other people is negative. The distinction between positive and negative obligations is fundamental to quite a bit of thinking about justice. Every state has a law against murdering people, but very few (if any) states have so-called "Good Samaritan" laws that require individuals actively to assist others who in danger of losing their lives. Though the choice to murder someone and the choice not to assist a drowning person are both morally reprehensible and both result in the same consequences, they are qualitatively different choices because the former involves action whereas the latter involves passivity. Though this is a terribly controversial issue, many theorists believe that the government's only business lies in prohibiting bad acts, not requiring good acts. In almost any debate where justice is involved, there is always the potential for the distinction between positive and negative obligations to become important. Therefore, I think it's important that you understand both sides of the issue.

Pro: The rationale for maintaining a distinction between positive and negative duties

Remember that where there is an obligation, there is necessarily a desert. In other words, if I'm obligated to do something for someone, then that something is the person's just desert. It helps to refute the existence of an asserted positive obligation by framing it in terms of desert. For example, instead of talking about whether or not the government has a positive obligation to provide basic necessities to its impoverished citizenry, ask yourself whether or not those who are impoverished deserve the resources that the labor of other people have helped to create. From this example, I think it's pretty easy to see that a positive obligation automatically implies that the person to whom the duty is owed has a claim upon the time, labor, or body of another person. Negative obligations, on the other hand, arise from a person's claim on their OWN time, labor, and body - in other words, self-ownership. Because self-ownership ought to be the foundation of any system of justice that respects individual dignity, then negative obligations must remain in a distinct category from positive obligations.

Con: Indicting the positive/negative bright line

From the perspective of justice (as opposed to morality), I think that the arguments for abandoning the distinction between action and inaction are very convincing. In a civil society, even ostensibly negative obligations like the duty not to kill other people require governmental enforcement in order to retain any semblance of validity. This inevitably involves institutions like courts and a police force (which even a libertarian would agree are justifiable reasons for governmental taxation and spending). So even negative obligations are, at bottom, claims upon specific social resources. On a practical level, that makes them no

different from the positive governmental obligation to provide a minimal standard of living that people like John Rawls assert ought to take precedence over the negative right to property. It is therefore foolish to maintain a distinction between positive and negative obligations when in the end they both collapse to the same thing anyway.

Another good argument appeals to the reason that society places obligations upon individuals in the first place. The only real reason we talk about obligations, the argument claims, is because it provides a useful framework for conditioning action that we perceive as "right" or "proper." For example, maiming and stealing are actions that pose a threat to society. So we tell people that they have an obligation not to maim or steal in order to condition those actions away. If we want to condition people not to kill because human life is valuable, shouldn't we also want to condition people to save the lives of those in danger for the exact same reason? This approach to talking about duties is called functionalism - it examines the function that obligations serve, and attempts to extrapolate from that analysis.

That's enough generalizations for now. On to...

## II. Theories of Political and Economic Justice

### A. Libertarianism

The roots of libertarianism go back to John Locke. He wrote:

Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

-- Locke, John. *Second Treatise on Government*. Chapter V, Section 27.

In other words, people have an absolute right to their own bodies, and thus an absolute right to the fruits of the labor they voluntarily choose to undertake with their bodies. The famous modern libertarian Robert Nozick expands upon Locke's belief in the pre-eminence of property rights by elucidating two principles of justice. First, anyone who acquires a piece of property by just means is entitled to that property. Secondly, anyone who gains a piece of property by just means through transfer with someone else who was entitled to that property, is now entitled to that property himself. To these two principles, Nozick adds a third corollary: that no two claims upon the same piece of property can both be just, and that the only just claims on property are those made through the application of the first and second principles.

So with its emphasis on property rights, the nucleus of libertarian theory is its opposition to governmental intervention into the private economic and moral decisions of individuals. Taxation for the sake of income redistribution is not justified because it fails to meet Nozick's two criteria for the legitimate acquisition of property.



## B. Egalitarianism

Remember that Aristotle's definition of justice was treating equals equally and unequals unequally in proportion to their relevant inequalities. That's pretty well accepted - the disagreements come over the criteria for determining which inequalities are relevant. John Rawls, a professor at Harvard University and author of a book called "A Theory of Justice," offers the concept of the veil of ignorance in order to determine the inequalities that society ought to take into account when distributing benefits.

Rawls' attempt to find a guiding principle for recognizing relevant inequalities begins with his embracing of the principle of objectivity. He believes that the most just decisions are the ones made by people who, divested of all bias, undertake an honest attempt to be fair. We live in a society that rewards innate talent (whether academic, athletic, or otherwise) and quality education. Talent is largely the result of a combination of genetic and developmental strokes of good luck collectively called the genetic lottery. Access to quality education is the result of being born to affluent parents who encourage their children to undertake intellectual pursuits. This is called the social lottery. Since both the social and genetic lotteries are random, it follows that the distribution of wealth in society is arbitrary, and that people who've benefited from these strokes of luck are inherently biased in their evaluation of whether or not income redistribution is just.

So Rawls considers what decisions people would make about the distribution of wealth in society if they were behind a hypothetical veil of ignorance that deprived them of knowledge about their own social and economic situation. From behind the veil, people will make more objective (and thus presumably more just) choices. Rawls then theorizes that rational actors from behind the veil of ignorance would choose to live in a society that provided for the basic needs of its least advantaged members. Any other choice would simply be too risky, because the rational actor would have to take into account the possibility that, once the veil is lifted, he might be among society's least-advantaged members (i.e. he hadn't gotten lucky in the genetic and social lotteries).

## C. Criteria for evaluating the libertarian/egalitarian controversy

It's fortunate that thinkers on both sides of the issue mostly agree that there are two criteria that matter in the resolution of the economic justice debate. First, both sides want a political system that protects people's economic rights. Secondly, both libertarians and egalitarians alike want to improve the quality of life, in strictly utilitarian terms, all across society. The latter criterion is fairly unambiguous, but as for the former, the two sides disagree with each other on what the term "economic rights" means. For Nozick and company, it obviously means the protection of property rights, while for Rawls and friends it means the governmental provision of a minimal standard of living for all via income redistribution. So how do you win the debate on either side? This will involve an exercise in both internal and external weighing. Internal weighing means evaluating the relative importance of all the arguments that affect one issue, while external weighing means evaluating the relative important of many separate issues.

Let's consider the job of the egalitarian first. It's important that you not allow your libertarian opponent to set the grounds for debate by letting a lot of impassioned rhetoric about property rights go unchallenged. Remember, you're arguing on the side of societal welfare against individual rights, so follow my advice from above about winning that conflict - and this time, force your opponent to give a well thought out argument for the existence of property rights. Then, because it will almost impossible to give a good deontological justification for a right to basic necessities, you must argue that rights are nothing more than entitlements society has decided to give to people for various beneficial reasons. You must also push hard for the necessity of objectivity in deciding what tenets a system of economic justice must have. This will allow you to claim that rights, too, must be distributed from behind the Rawlsian veil of ignorance, just like any other social good. Argue that rational people behind the veil will inevitably construct not to

a right to property, but rather a right to a minimal standard of living funded by society. This allows you to claim that right as an a priori voter that mandates an egalitarian framework of evaluation. It also absolutely requires you to win the argument that income redistribution improves the overall quality of life in society.

Now let's look at the libertarian side. Your first step should be to use Nozickian arguments to establish a conception of economic rights that involves the predominance of property rights over subsistence rights. There's absolutely no reason for you to lose this issue - if you argue things well, unless your opponent is Rawls himself it will be difficult for him to prove that subsistence is a prima facie right that takes precedence over the right to private property. Your opponent will instead rely on arguments based on the quality of life criterion to win. For this reason, you want to claim that rights are an a priori voting issue (just I advised you to do for subsistence rights in the last paragraph). Argue that before the judge even evaluates the quality of life debate, he should decide whether or not people have a right to property that transcends the subsistence needs of others. If they do, you win the issue outright without even having to attempt to argue the second criterion for economic justice. Only if the judge finds that the right to property doesn't automatically trump all other considerations will he move on to evaluate the quality of life debate.

Now let's imagine your opponent is pretty good and was able to punch enough holes in your arguments about property rights so that the judge is forced to move on to evaluate the arguments about whether libertarianism or egalitarianism produces a better quality of life. You certainly don't want to concede this issue, because there is tons of literature to support the position that an unfettered market will produce a better quality of life for the poor than can a welfare state. P.J. O'Rourke argues just that:

The worrier about fairness can recite the old saw: "The rich get richer and the poor..." "Get entertained by People Magazine stories about divorces among the rich." That is not how the worrier was going to finish his sentence. "Get lower mortgage rates because banks have more money to lend." That's not it either. "Get better jobs because there's more capital to be invested in businesses." No, the cliché is "The rich get richer and the poor get poorer." Except there is no evidence of this in recent history. Per capita GDP is a tricky figure and doesn't tell us about the well being of individual people. But there are other statistics that don't present the same problems of averaging. Life expectancy and infant mortality rates do tell us how things are going for ordinary folks... In the early 1950's the richest countries had an average infant-mortality rate of 58 deaths per 1000 live births. By the early 1990's the rate was down to 11... Infant mortality rates give us hopeful information about world economic growth. Yes, the rich are getting richer, but the poor aren't becoming worse-off. They're becoming parents. Life expectancy tells the same story. In the 1950's people in rich countries lived, on average, 66.5 years. By the early 1990's they were living 74.2 years. In the poorest countries, average life spans increased from 35.5 years to 49.7 years... The rich are getting richer. The poor are getting richer. And we're all getting older. So if wealth is not a worldwide round robin of purse snatching, and if the thing that makes you rich doesn't make me poor, why should we care about fairness at all?

-- P.J. O'Rourke. *Eat the Rich*. Cato Institute, 1998. pp 43-4.

So the facts about economic growth bear out the argument that free markets based upon property rights (i.e. libertarianism) increase the quality of life for everyone in society from top to bottom. O'Rourke goes on to explain how exactly that works.

There is another difficulty of political control of the economy which keeps even the best-behaved governments from using resources well. This problem was explained by economists Milton and Rose Friedman in their book *Free to Choose*. The Friedmans argued that there are only four ways to spend money. 1. Spend your money on yourself. 2. Spend your money on other people. 3. Spend other people's money on yourself. 4. Spend other people's money on other people. If you spend your money on yourself, you look for the best value at the best price - knock off Pings on sale at Golf-Fore-Less. If you spend your money on other people, you still worry about price, but you may not know or care what the other people want. So your brother in law gets Deepak Chopra book for Christmas. If you spend other people's money on yourself, it's hard to resist coming home with real Pings, a new leather bag, orange pants with little niblicks on them, and a pair of Foot-Joy spikes. And if you spend other people's money on other people, any damn thing will do and to hell with what it costs. Almost all government spending falls into category four. This is how the grateful residents of the Ukraine got Chernobyl.

-- P.J. O'Rourke. *Eat the Rich*. Cato Institute, 1998. pp 41-2.

And finally, with even more great rhetoric, O'Rourke concludes:

Take the real world example of two kids who graduate from college with honors. One is an admirable idealist. The other is on the make. The idealist joins Friends of the Earth and chains himself to a sequoia. The sharpie goes to work for an investment bank selling fishy derivatives and makes \$500,000 a year. Even assuming the selfish young banker cheats the IRS, he'll end up paying \$100,000 a year in taxes: income tax, property tax, sales tax, etc. While the admirable idealist has saved one tree (if the logging company doesn't own bolt cutters), the pirate in a necktie has contributed to society \$100,000 worth of schools, roads, and U.S Marines, not to mention Interior Department funding sufficient to save any number of trees and the young idealists chained thereto. And if the soulless yuppie cheats the IRS so well that he ends up keeping the whole half-million? The cash isn't going to sit in his cuff-link box. Whether spent or saved, the money winds up invested somewhere, and maybe that investment leads to the 21st century's equivalent of the moldboard plow, the microchip, or the mocha latte. Society wins. Wealth brings great benefit to the world. Rich people are heroes. They don't usually mean to be but that's their problem, not ours.

-- P.J. O'Rourke. *Eat the Rich*. Cato Institute, 1998. pp 46-7.

The free market, when secured by governmental protection of our property rights, has incredible liberatory potential. So we shouldn't worry about income stratification. Lots of wealthy people are good. Only a few wealthy people are also good. Wealth is good, because it makes society a better place for everyone to live.

Let me conclude this section by agreeing with your inevitable criticism that I've not done justice (no pun intended) to the depth of thought behind Rawls' and Nozick's positions. This part of my section is nothing more than an overview, and for more information on political justice I refer you to the section specifically on Rawls, Nozick, and Sandel written by Nathan Foell. Also, two books will be invaluable to you in your LD career: *A Theory of Justice*, by John Rawls, and *Anarchy, State, and Utopia*, by Robert Nozick. These are the two of the most famous investigations of the egalitarian and libertarian viewpoints, respectively, of the entire 20th century. If a future topic requires even greater depth, some other thinkers to consult are Friedrich Hayek and Milton Friedman (on the right), and Ronald Dworkin and Kai Nielsen (on the left).

### III. Theories of Criminal Justice

Remember the section above on the individual versus society, and how the criteria debate ultimately came down to a dispute over whether rights should be viewed as deontological or utilitarian constructs? Debates over criminal justice are quite similar in that regard. First, there is the deontological, or retribution-based, warrant for punishment:

For our purposes we may say that there are two justifications of punishment. What we may call the retributive view is that punishment is justified on the grounds that wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from his guilt, and the severity of the appropriate punishment depends on the depravity of his act. The state of affairs where a wrongdoer suffers punishment is morally better than the state of affairs where he does not; and it is better irrespective of the consequences of punishing him.  
-- John Rawls. "Two Concepts of Rules." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 31-37.

Of course, there is also the utilitarian justification for punishment:

What we may call the utilitarian view holds that on the principle that by-gones are by-gones and that only future consequences are material to present decisions, punishment is justifiable only by reference to the probable consequences of maintaining it as one of the devices of the social order. Wrongs committed in the past are, as such, not relevant considerations for deciding what to do. If punishment can be shown effectively to promote the interest of society, it is justifiable; otherwise it is not.  
-- John Rawls. "Two Concepts of Rules." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 31-37.

From capital punishment to juvenile crime, utilitarianism and deontology lead to different conclusions and serve as the ultimate linchpin of conflict in resolutions over criminal justice. In this section, I first intend to explain the utilitarian theory, and then how to beat it with the retributive theory. Finally, I'll explain how the utilitarian can respond by actually using this tension between means and ends to his strategic advantage.

#### A. Utilitarian Theories of Punishment

According to theories of this sort, the criminal justice system exists because it serves desirable social goals... in some cases, by rehabilitating and reforming criminals, in others by deterring people from committing crimes in the first place, and in still others merely by incapacitating the offending criminal so he can no longer harm society. Incapacitation is fairly obvious (if the criminal is locked up, he can't do it again), and a discussion of rehabilitation is really beyond the scope of this criteria handbook, but I will spill a little bit of ink on the theory of deterrence.

Here I can do no better than to turn to the experts on deterrence. Ernest van den Haag writes:

Unlike natural dangers, legal threats are constructed deliberately by legislators to restrain actions which may impair the social order. Thus legislation transforms social into individual dangers. Most people further transform external into internal danger: they acquire a sense of moral obligation, a conscience, which threatens them, should they do what is wrong. Arising originally from the external authority of rulers and rules, conscience is internalized and becomes independent of external forces. However, conscience is constantly reinforced in those whom it controls by the coercive imposition of external authority on recalcitrants and on those who have not acquired it. Most people refrain from offenses because they feel an obligation to behave lawfully. But this obligation would scarcely be felt if those who do not feel or follow it were not to suffer punishment.

-- Ernest van den Haag. "On Deterrence and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 128-9.

So according to van den Haag, deterrence works on two levels. First, it transforms social dangers into individual dangers that rational egoists would want to avoid. For example, traffic fines turn the social danger of cars traveling at excessive speeds into the individual danger that you will be pulled over by a cop and ticketed for going 35 in a school zone. So you follow the laws to avoid punishment. Secondly, and more subtly, punishments deter because they are an important part of how society conditions individuals to behave in certain ways. Harsh laws against murder, for example, play no small role, claims van den Haag, in people's collective moral condemnation of killers. "Conscience" is formed by the confluence of many different social pressures, including the knowledge that wrong doers will be punished. Mr. Van den Haag then continues:

Punishments deter those who have not violated the law for the same reasons - and in the same degrees (apart from internalization: moral obligation), as do natural dangers. Often natural dangers - all dangers not deliberately created by legislation (e.g. injury of the criminal inflicted by the crime victim) are insufficient. Thus the fear of injury (natural danger) does not suffice to control city traffic; it must be reinforced by the legal punishment meted out to those who violate the rules. These punishments keep most people observing the regulations. However, where (in the absence of natural danger) the threatened punishment is so light that the advantage of violating the rules tends to exceed the disadvantage of being punished (divided by the risk), the rule is violated. In this case the feeling of obligation tends to vanish as well. Elsewhere punishment deters.

-- Ernest van den Haag. "On Deterrence and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 128-9.

But since some crimes are committed, doesn't that show holes in the theory of deterrence? Van den Haag goes on in his essay to answer this charge:

To be sure, not everybody responds to threatened punishment. Nonresponsive persons may be (a) self-destructive or (b) incapable of responding to threats, or even of grasping them. Increases in the size, or certainty of penalties would not affect these two groups. A third group (c) might respond to more certain or more severe penalties... Whether to increase penalties (or improve enforcement) depends on the importance of the rule to society, the size and likely reaction of the group that did not respond before, and the acceptance of the added punishment and enforcement required to deter it. Observation would have to locate the points - likely to differ at different times and places - at which diminishing, zero, and negative returns set in. There is no reason to believe that all present and future offenders belong to the a priori nonresponsive groups, or that all penalties have reached the point of diminishing, let alone zero returns.  
-- Ernest van den Haag. "On Deterrence and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 128-9.

That's the criminal justice theory of deterrence (not to be confused with nuclear deterrence) in a nutshell. Because violations of the criminal law are socially harmful, we ought to punish the offenders so as to minimize future transgressions. Obviously, it's a utilitarian theory because it makes no mention of the criminal's or the victim's just deserts. That observation provides a good segue to...

## B. Retributive Theories of Punishment

Let's take an obviously extreme example and see what we can learn from it about the utilitarian perspective. Ask yourself: would it serve justice to put convicted jaywalkers in prison? The answer is certainly no, but I find it difficult to explain why that's the case from a utilitarian perspective. Remember, as utilitarians we're not allowed to make the obvious response that jaywalking is too insignificant a crime to merit a punishment as harsh as imprisonment, because we can't reference the deserts of the criminal or victim. Only future consequences matter to a utilitarian - the facts surrounding the crime are in the past and thus largely irrelevant. Now, obviously jaywalking does minimal harm to society's interest in maintaining an orderly system of crosswalks, and deterring jaywalkers from committing such a heinous act does serve a useful end. And surely the threat of imprisonment would deter even the most hardened of jaywalkers, right? Yet that prospect fails to pass even the slightest scintilla of scrutiny by our common sense. Of COURSE we shouldn't imprison jaywalkers, and it seems like any reasonable theory of punishment ought to make that fact blatantly obvious. But there's nothing intrinsic to the utilitarian viewpoint that would prevent us from using prison time to deter jaywalkers. The only reason I see that would prevent it would be van den Haag's arguments about the points of diminishing, zero, and eventually negative returns as the severity of the punishment increases, and that those points could only be determined empirically. Does that mean society really has to experiment with the traffic code and start imprisoning jaywalkers to see if the resulting backlash really does negate the benefits derived from deterrence, namely a lower jaywalking rate? Or is there just a simpler theory of punishments that gets us out of this mental torture chamber?

That's where the theory of retribution comes in. The best explanation of retribution, hands down, that I've ever come across, comes ironically from one of the theory's biggest opponents, a man named Jeremy Reiman. In my view, since this criteria handbook is a pedagogical tool rather than a collection of topic-specific evidence, Reiman's true opinion is largely irrelevant as long as the explanations he gives of retributive theories are cogent and useful (which they are). So although you should make no mistake that

Reiman disagrees with retribution, I have no qualms about quoting his explanations in defense of the theory.

Reiman begins by detailing the hurdles that a successful theory of retribution must clear. (Note: when he talks about the "lex talionis," he means the principle that the punishment ought to fit the crime; an eye for an eye, so to speak.)

There is nothing self-evident about the justice of the lex talionis nor, for that matter, of retributivism. The standard problem confronting those who would justify retributivism is that of overcoming the suspicion that it does no more than sanctify the victim's desire to hurt the offender back. Since serving that desire amounts to hurting the offender simply for the satisfaction that the victim derives from seeing the offender suffer, and since deriving satisfaction from the suffering of others seems primitive, the policy of imposing suffering on the offender for no other purpose than giving satisfaction to his victim seems primitive as well. Consequently, defending retributivism requires showing that the suffering imposed on the wrongdoer has some worthy point beyond the satisfaction of victims.

-- Jeremy Reiman. "Civilization and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 178-187.

Reiman then begins his defense of what he calls "the retributivist principle," which accounts for the justice of lex talionis.

I think that we can see the justice of the lex talionis by focusing on the striking affinity between it and golden rule. The golden rule mandates "Do unto others as you would have others do unto you," while the lex talionis counsels "Do unto others as they have done unto you." It would not be too far-fetched to say that the lex talionis is the law enforcement arm of the golden rule, in the sense that if people were actually treated as they treated others, then everyone would necessarily follow the golden rule because then people could only willingly act toward others as they were willing to have others act toward them. This is not to suggest that the lex talionis follows from the golden rule, but rather that the two share a common moral inspiration: the equality of persons... This leads to the lex talionis by two approaches that start from different points and converge.

-- Jeremy Reiman. "Civilization and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 178-187.

So far so good. Reiman has given an overview of why the lex talionis is just, and now he will provide two independent warrants linking it to the "Golden Rule."

I call the first approach Hegelian because Hegel held that crime upsets the equality between persons and retributive punishment restores that equality by "annulling" the crime. As we have seen, acting according to the golden rule implies treating others as your equals. Conversely [sic, he means contrapositively], violating the golden rule implies the reverse: Doing to another what you would not have that other do to you violates the equality of persons by asserting a right toward the other that the other does not possess toward you. Doing back to you what you did "annuls" your violation by reasserting that the other has the same right toward you that you assert toward him. Punishment according to the lex talionis cannot heal the injury that the other has suffered at your hands, rather it rectifies the indignity he has suffered, by restoring him to moral equality with you.

-- Jeremy Reiman. "Civilization and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 178-187.

But what distinguishes this Hegelian notion of retribution from the utilitarian perspective explained earlier? According to Reiman, a crime is not viewed in terms of suffering but rather in terms of an inappropriate inequality in the relations between two people:

Instead of seeing morality as administering doses of happiness to individual recipients, the retributivist envisions morality as maintaining the relations appropriate to equally sovereign individuals. A crime, rather than representing a unit of suffering added to the already considerable suffering in the world, is an assault on the sovereignty of an individual that temporarily places one person (the criminal) in a position of illegitimate sovereignty over another (the victim). The victim (or his representative, the state) then has the right to rectify this loss of standing relative to the criminal by meting out a punishment that reduces the criminal's sovereignty in the degree to which he vaunted it over his victim's... It is by virtue of having the right to punish the violator... that the victim's equality with the violator is restored.

-- Jeremy Reiman. "Civilization and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 178-187.

So the lex talionis sets out a just punishment for criminals because of the moral need for the state to recognize the equality of persons. There is another, different justification, however, based upon theories from Kant:

I call the second approach Kantian since Kant held roughly that, since reason (like justice) is no respecter of the sheer difference between individuals, when a rational being decides to act in a certain way toward his fellows, he implicitly authorizes similar action by his fellows toward him. A version of the golden rule, then, is a requirement of reason: acting rationally, one always acts as he would have others act toward him. Consequently, to act toward a person as he has acted toward others is to treat him as a rational being, that is, as if his act were the product of a rational decision... We can conclude from Kant's arguments that a rational being cannot validly complain of being treated in the way he has treated others, and where there is no complaint, there is no injustice, and where there is no injustice, others have acted within their rights.

-- Jeremy Reiman. "Civilization and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 178-187.



The conclusion of both arguments, according to Reiman, is exactly the same:

The Hegelian and Kantian approaches arrive at the same destination from opposite sides. The Hegelian approach starts from the victim's equality with the criminal, and infers from it the victim's right to do to the criminal what the criminal has done to the victim. The Kantian approach starts from the criminal's rationality and infers from it the criminal's authorization of the victim's right to do to the criminal what the criminal has done to the victim. Taken together, these approaches support the following proposition: the equality and rationality of persons implies that an offender deserves and his victim has the right to impose suffering on the offender equal to that which he imposed on the victim... (T)he point of this affirmation is, like any moral affirmation, to make a statement to the criminal, to impress upon him his equality with his victim (which earns him a like fate) and his rationality (by which his actions are held to authorize his fate), and to the society, so that recognition of the equality and rationality of persons becomes a visible part of our shared moral environment that none can ignore in justifying their actions to one another... (This) constitutes what is rational is the desire for revenge.  
-- Jeremy Reiman. "Civilization and the Death Penalty." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 178-187.

And there you have it. In my view, this is a terribly persuasive argument in favor of the theory of retribution. It really seems to strike a chord by offering a reasoned justification for what most of us seem to think already - that harsher crimes merit harsher punishments, regardless of the overall utility to be derived. So how should you go about arguing criteria on either sides of the dispute?

When arguing for retribution, it's very important that you choose deontological criteria for justice. For example, if you were defending capital punishment on the grounds that it coincides with the retributivist principle (like LDers did in November and December of 1998), you might value justice and choose two criteria of respecting the innate equality of persons, and giving rational actors their proper deserts. After you make the same arguments that Reiman does, you'll have a prima facie case. Your opponents, however, will probably present utilitarian arguments - that capital punishment doesn't deter crime, for example, or that it costs much more money than life imprisonment. It's impossible to weigh those concerns of utility against deontological positions like equality or dignity. So you'll have to argue why your standard is superior to your opponent's for weighing the arguments in the round.

One reason you can give as to why a retribution-based standard is a better criterion for just punishment is the jaywalking example from above about how utilitarianism fails to give an appropriate upper bound on the severity of punishment for a particular crime. On the other hand, retributivism gives an absolute upper bound on the range of deserved punishment (the same amount of harm inflicted upon the victim) and a reasonable lower bound (the point at which the punishment is no longer severe enough to demonstrate our genuine belief that the victim is on equal moral terms with the criminal). Furthermore, from a utilitarian perspective it makes little sense to take into account mitigating factors when sentencing criminals, or to make distinctions between crimes based solely upon the state of mind of the perpetrator (for example, the difference between cold-blooded murder and manslaughter in the heat of the moment). Retributivism allows us to make those distinctions because they affect the rationality of the criminal at the time the crime was committed. Also, mitigating factors like family background might represent relevant inequalities between the criminal and victim. All of these concerns do and should affect the severity of punishment, but they only make sense under a retributivist framework.

## The Utilitarian Answer

How does one counter the retributivist position and buttress utility as the proper standard of punishment if it's necessary to do so on the other side of a resolution? Given the above arguments in favor of retribution, that might seem like a difficult task. But in fact, it's possible to sidestep the whole issue by making the following observation articulated by John Rawls:

(A) particular man is punished, rather than some other man, because he is guilty, and he is guilty because he broke the law (past tense). In his case the law looks back, the judge looks back, the jury looks back, and a penalty is visited upon him for something he did. That a man is to be punished, and what his punishment is to be, is settled by its being shown that he broke the law and that the law assigns that penalty for the violation of it... On the other hand we have the institution of punishment itself, and recommend and accept various changes in it, because it is thought by the (ideal) legislator and by those to whom the law applies that, as a part of a system of law impartially applied from case to case arising under it, it will have the consequence, in the long run, of furthering the interests of society. One can say then, that the judge and the legislator stand in different positions and look in different directions: one to the past, the other to the future. The justification of what the judge does... sounds like the retributive view; the justification of what the (ideal) legislator does... sounds like the utilitarian view.  
-- John Rawls. "Two Concepts of Rules." *Punishment and the Death Penalty*. Prometheus, 1995. pp. 31-37.

Resolving the issue of which standard of evaluation should be used, then, means persuading the judge to look at the resolutional conflict through one lens or the other (i.e. as either judge or legislator). If you're upholding utilitarianism, you should observe two things. First, note that basically all resolutions call for a justification of a general principle of justice rather than the right answer to specific individual cases. That sounds much closer to the role of policymaker than judge, which tends to indicate that the critic of your round ought to use a utilitarian standard of evaluation. Secondly, the policymaker's role in the criminal justice system is much more fundamental, because the judge merely carries out and interprets the will of the legislator as best as he can determine it. So the more basic question involves utility rather than retribution.

Lastly, wouldn't a retribution-based standard of punishment that justifies punishments equal in severity to the crimes committed allow some sanctions that are just blatantly cruel? Would Kant and Hegel require us to rape rapists, torture torturers, and perform the logical impossibility of executing multiple murderers multiple times merely in order to demonstrate the equality and rationality of all persons? Surely a standard of punishment that allows such wanton brutality must be off the mark.

## The Final Retributivist Rejoinder

Although many intelligent and well-meaning people believe in this argument passionately, and although it certainly makes for good rhetoric, I've always thought it to be a little fatuous. Remember that the retributivist principle sets a range of punishments that are compatible with the equality of victim and criminal. While we would be perfectly \*justified\* in exacting the maximally severe punishment (which could mean torturing torturers and the like), we as a society simply refuse to do so for moral considerations. In other words, we feel that there are certain things we should not do to our fellow human beings, even if it would be just for us to do them. So we seek some other similarly severe punishment about which we do not have such moral compunctions. That's why we put rapists in prison for a long period rather than reciprocating their heinous crime. Justice allows us to do that as long as the actual

punishment given doesn't fall below the range of punishments allowed by the retributivist principle, thereby trivializing the harm done and denying the equality and rationality of persons.

#### Conclusion

Well, that's the story on justice. As a value, it's undoubtedly debate's biggest tent. I hope by reading this you've gained some knowledge on various theories of justice, as well as a good idea of how to apply those theories strategically in a round. Good luck, and as the fighter pilots say, good hunting.

## Rawls, Nozick and Sandel: Three Theories of Justice

by Nathan Foell

It is a measure of its greatness that Rawls' earlier work *A Theory of Justice* provoked not one debate but three. The first, by now a starting point for students of moral and political philosophy, is the argument between utilitarians and rights-oriented liberals. Should justice be founded on utility, as Jeremy Bentham and John Stuart Mill argue, or does respect for individual rights require a basis for justice independent of utilitarian considerations, as Kant and Rawls maintain? Before Rawls wrote, utilitarianism was the dominant view within Anglo-American moral and political philosophy. Since *A Theory of Justice*, rights-oriented liberalism has come to predominate.

The second debate inspired by Rawls' work is an argument within the terms of rights-oriented liberalism. If certain individual rights are so important that even considerations of the general welfare cannot override them, it remains to ask what rights these are. Libertarian liberals such as Robert Nozick and Friedrich Hayek argue that government should respect basic civil and political liberties, and also the right to the fruits of our labor as conferred by the market economy; redistributive policies that tax the rich to help the poor thus violate our rights. Egalitarian liberals like Rawls disagree. They argue that we cannot meaningfully exercise our civil and political liberties without the provision of basic social and economic needs; government should therefore assure each person, as a matter of right, a decent level of such goods as education, income, housing, health care, and the like. The debate between the libertarian and egalitarian versions of rights-oriented liberalism, which flourished in the academy in the 1970s, corresponds roughly to the debate in American politics, familiar since the New Deal, between defenders of the market economy and advocates of the welfare state.

The third debate prompted by Rawls' work centers on an assumption shared by libertarian and egalitarian liberals alike. This is the idea that government should be neutral among competing conceptions of the good life. Despite their various accounts of what rights we have, rights-oriented liberals agree that the principles of justice that specify our rights should not depend for their justification on any particular conception of the good life. This idea, central to the liberalism of Kant, Rawls, and many present-day liberals, is summed up in the claim that the right is prior to the good. (Sandel 184-5)

This rather long quotation from *Liberalism and the Limits of Justice* by Michael Sandel is included here because it provides the rationale for this essay. The debates surrounding *A Theory of Justice* by John Rawls have dominated moral and political philosophy for the last thirty years. Obviously, as a Lincoln-Douglas debater, there is much to be gained in considering how these philosophical debates relate to the grave moral and political questions posed by different resolutions. My hope is that this essay can orient you to the terminology and arguments found in the second and third of the debates outlined by Sandel. An initial measure of the impact of Rawls' work is that utilitarianism is seldom used as a criterion for morality or justice in debate rounds, and when it is the arguments marshaled against it are usually those crafted by Rawls. Consequently, this essay will not discuss the first of the debates surrounding *A Theory of Justice*, not because it lacks theoretical importance, but because utilitarianism has not only fallen out of favor in philosophical circles but also in the circle of high school debate. Essentially, the depth and seriousness of these controversies in contemporary political philosophy and their relevance to the topics considered in L-D debate are the primary reasons why I believe this essay is worth writing and reading

(outside of the fact that if you have read this far then you obviously have bought this publication and you might as well read all the essays in it, even mine).

This essay is intended to provide you with an introduction to three different theories of justice, each of which has figured prominently in philosophical and high school debate. First, I will outline the views of John Rawls as presented in *A Theory of Justice*, and then I will consider the entitlement theory of Robert Nozick and why he believes it to be superior to the theory developed by Rawls. Finally, I will summarize the communitarian position of Michael Sandel and examine his powerful critique of liberalism as it is represented by Rawls. I will also present criticisms that have been directed against Nozick and Sandel and ways that Rawls might defend himself against their attacks on his theory. I should mention that in writing this essay I have been forced to balance two considerations: presenting the full meaning and complexity of these philosophical systems, and concentrating on those aspects of the philosophies that have particular relevance for debate. Since this essay is designed to aid in debating certain criteria for justice, I have given precedence to the second of these two considerations. Consequently, it is important to realize that not all of the different aspects of the thought of these three figures will be discussed in this essay. Considering that people have written rather long books about just one aspect of the thought of Rawls or Nozick or Sandel, giving these theories the full treatment that they deserve is simply not possible within the length and purpose of this essay. In the conclusion to the essay I will try to provide some guidance for reading the work of these three philosophers so that you can enjoy their work for yourself and hopefully discover the intricacies and fullness of issues I was sorry to have to gloss over, or even omit completely. But let's accomplish first things first.

Given the vast secondary literature surrounding *A Theory of Justice* it is surprising that Rawls' theory has a relatively simple and easy to understand application to debate. Obviously, there are a number of complexities within his philosophical system, but his ideas can be used in a debate round in an accessible manner that at the same time does not misrepresent them. That is certainly one of the major reasons that Rawls' work has found its way into so many debate rounds. I will give a brief sketch of how his theory can be used in a round, and then I will explain the various arguments and terms and supply the warrants behind the claims. Basically, Rawls argues that principles of justice for the basic structure of society should be chosen in an "original position" that corresponds roughly to the state of nature in social contract theory. Whatever principles would be chosen in the original position are said to be just because that position is one of equality in which each party to the agreement is represented as a free and equal person. Rawls argues that in this initial position of equality the parties would choose two principles of justice to regulate the basic structure of society. To use this theory in a debate round you simply need to present reasons why the original position is a good criterion for justice and demonstrate that situated in this position people would choose the two principles of justice as the terms of fair social cooperation. Then show that affirming or negating the resolution is the only way to honor or remain consistent with the two principles of justice, and you have presented a truly logical argument or syllogism to support your side of the resolution.

So what is the "original position" and why should anyone believe that it is a good standard or criterion for determining principles of justice? Rawls first introduces the concept of the original position when he summarizes the main idea of his theory of justice.

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness. (10)

Thus the original position is a hypothetical situation in which the members of a society choose the principles of justice that are to govern the basic structure of their society. The most important feature of the original position is that the parties are assumed to be under a “veil of ignorance.”

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone’s relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice. The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name “justice as fairness”: it conveys the idea that the principles of justice are agreed to in an initial situation that is fair. (11)

Now with some knowledge of the philosophical debts and guiding themes of the Rawlsian theory of justice, and a better idea of what is meant by the term original position, we can examine two main reasons why the original position provides a good standard or criterion for justice. The first reason was hinted at in the last piece of evidence. Basically, the original position provides a model for thinking or debating about justice; the restrictions on knowledge placed by the veil of ignorance represent those constraints that it seems reasonable to impose on arguments for principles of justice.

One should not be misled, then, by the somewhat unusual conditions which characterize the original position. The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on those principles themselves. Thus it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles. It also seems widely agreed that it should be impossible to tailor principles to the circumstances of one’s own case. We should insure further that

particular inclinations and aspirations, and persons' conceptions of their good do not affect the principles adopted. The aim is to rule out those principles that it would be rational to propose for acceptance, however little the chance of success, only if one knew certain things that are irrelevant from the standpoint of justice. For example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle. To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information. One excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices. In this manner the veil of ignorance is arrived at in a natural way. This concept should cause no difficulty if we keep in mind the constraints on arguments that it is meant to express. At any time we can enter the original position, so to speak, simply by following a certain procedure, namely, by arguing for principles of justice in accordance with these restrictions. (16-7)

The veil of ignorance prevents people from arguing for certain principles of justice solely because those principles would suit their special interests. In sum, it ensures that whatever agreement the parties reach will be a fair one. The second reason that the original position is a good criterion for justice is that it provides a mechanism for determining consent to a social system. In the real world, it is obvious that no one is able to decide whether or not to enter a society or on what terms he or she will live in that society. However, if the parties in the original position would agree to certain principles of justice, it is possible to say that a person would consent to a social system governed by those principles if she were fairly situated with the other members of that society. Consequently, utilizing the concept of the original position allows us to truly respect people, because we can determine what social scheme they would agree to or desire if they actually did have a say in the matter.

Justice as fairness begins, as I have said, with one of the most general of all choices which persons might make together, namely, with the choice of the first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions. Then, having chosen a conception of justice, we can suppose that they are to choose a constitution and a legislature to enact laws, and so on, all in accordance with the principles of justice initially agreed upon. Our social situation is just if it is such that by this sequence of hypothetical agreements we would have contracted into the general system of rules which defines it. Moreover, assuming that the original position does determine a set of principles (that is, that a particular conception of justice would be chosen), it will then be true that whenever social institutions satisfy these principles those engaged in them can say to one another that they are cooperating on terms to which they would agree if they were free and equal persons whose relations with respect to one another were fair. They could all view their arrangements as meeting the stipulations which they would acknowledge in an initial situation that embodies widely accepted and reasonable constraints on the choice of principles. The general recognition of this fact would provide the basis for a public acceptance of the corresponding principles of justice. No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair. In this sense its members are autonomous and the obligations they recognize self-imposed. (11-2)

Through his concept of the original position Rawls has solved two of the major problems associated with traditional social contract theory. In placing the parties in the original position under a veil of ignorance he has answered the question of why it is we should take agreements reached by the members of society about their terms of cooperation to be just or binding. The agreements reached are fair because no one can exploit social or natural contingencies and circumstances to his or her advantage in a way that he or she could in the traditional theory of the social contract. As Rawls illustrates in a previous piece of evidence, in traditional social contract theory a person could refuse to enter society or agree to terms of cooperation unless those terms favored her economic or social position, and Rawls solves this problem with the device of the original position. Second, in stressing the hypothetical nature of the agreement reached in the original position and making it an agreement about principles of justice not one to enter a particular society, he has resolved difficulties associated with the role of the state of nature in traditional social contract theory. Namely, he has accommodated the fact that there is no reason to believe that there ever was a state of nature or an agreement among people to enter any society found throughout recorded history, and that tacit consent theory has been a miserable failure in accounting for these facts about humans beings and their political associations. For if receiving any benefit from living in a society is enough to obligate one to follow all of the laws of that society, then the theory of the social contract fails in providing a way to assess and criticize social institutions because any social system will pass the test of "consent." However, Rawls has provided us with a way to truly determine what type of social institutions people would consent to in a fair position of equality. In this way he has retained the merits of social contract theory while avoiding its pitfalls.

It remains to be asked what principles of justice people would agree to in the original position. It could turn out that they end up being unable to agree on anything, or at best their judgments converge on a few extremely weak principles with no real content. One such principle might be that "No one should be forced to do anything unless it is absolutely necessary or something they are obligated to do." The glaring problem with said principle is that it leaves unspecified what a person is obligated to do or when something should be considered absolutely necessary. The principle is vague and does little to advance the main cause of justice, the resolution of competing claims. Luckily, Rawls argues, people in the original position would agree to two principles of justice to govern the basic structure of society. He formulates those principles as follows:

#### First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

#### Second Principle

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (266)

At first glance, it looks like we have cause to be quite pleased with the success of the original position in identifying principles of justice. These principles have substance to them and seem to be capable of balancing competing claims. Not only that, the principles do not appear to be too vague to regulate the basic structure of society. However, it still remains to be asked what is considered to be a liberty in the first principle and what is meant by the phrase fair equality of opportunity in the second principle. Not only must certain clarifications be made in the terms used to formulate the principles, even more importantly we must ask why it is that the parties in the original position would choose these particular



principles of justice. Attending to the first question first, Rawls gives a list of the liberties that are included under the first principle. These include: freedom of speech, freedom of assembly and conscience, the right to vote and hold public office, freedom of the person and freedom of thought, freedom from arbitrary arrest and seizure and so on. This list is not exhaustive and Rawls does not claim to provide a comprehensive list of basic liberties, but this sketch of them is enough to give you the general idea. Rawls maintains that protection of these basic liberties is to take precedence to all other social goals; in other words, the principles are lexically ordered. All this means is that if a society is forced to choose to pursue the first or second principle of justice, the first principle is to have priority. The reason that Rawls thinks the parties in the original position would establish this priority rule will be discussed when I come to the main grounds the parties have for choosing the two principles of justice. Part A of the second principle Rawls terms the difference principle. This stipulation is rather straightforward and does not seem to require explanation. It merely says that economic inequalities are only justified if they are to the benefit of the least advantaged members of society. The just savings principle also found in Part A will be discussed later in the essay. Finally, the requirement that people be able to openly compete for various offices and positions under conditions of fair equality of opportunity is simply meant to express the conviction that organizations that make use of differences in authority and responsibility should allow anyone who is qualified to hold those positions of greater authority. Basically, no one can be barred from running for political office or receiving a promotion in a company based on an arbitrary characteristic like race or gender.

Now we turn to the crucially important question of why the parties in the original position would choose to adopt these two principles of justice. There are three major reasons why the parties in the original position would prefer the two principles of justice to other familiar alternatives. First, the parties would choose the two principles of justice when they consider the strains of commitment.

The first confirming ground for the two principles can be explained in terms of what I earlier referred to as the strains of commitment. I said that the parties have a capacity for justice in the sense that they can be assured that their undertaking is not in vain. Assuming that they have taken everything into account, including the general facts of moral psychology, they can rely on one another to adhere to the principles adopted. Thus they consider the strains of commitment. They cannot enter into agreements that may have consequences they cannot accept. They will avoid those that they can adhere to only with great difficulty. Since the original agreement is final and made in perpetuity, there is no second chance. In view of the serious nature of the possible consequences, the question of the burden of commitment is especially acute. A person is choosing once and for all the standards which are to govern his life prospects. Moreover, when we enter an agreement we must be able to honor it even should the worst possibilities prove to be the case. Otherwise we have not acted in good faith. Thus the parties must weigh with care whether they will be able to stick by their commitment in all circumstances. Of course, in answering this question they have only a general knowledge of human psychology to go on. But this information is enough to tell which conception of justice involves the greater stress.

In this respect the two principles of justice have a definite advantage. Not only do the parties protect their basic rights but they insure themselves against the worst eventualities. They run no chance of having to acquiesce in a loss of freedom over the course of their life for the sake of a greater good enjoyed by others, an undertaking that in actual circumstances they might not be able to keep. (153-4)

There are several things that need to be mentioned here. Rawls argues that the parties in the original position would adopt a way of deciding on principles of justice called the maximin rule.

The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others. The persons in the original position do not, of course, assume that their initial place in society is decided by a malevolent opponent. As I note below, they should not reason from false premises. The veil of ignorance does not violate this idea, since an absence of information is not misinformation. But that the two principles of justice would be chosen if the parties were forced to protect themselves against such a contingency explains the sense in which this conception is the maximin solution. And this analogy suggests that if the original position has been described so that it is rational for the parties to adopt the conservative attitude expressed by this rule, a conclusive argument can indeed be constructed for these principles. Clearly the maximin rule is not, in general, a suitable guide for choices under uncertainty. But it holds only in situations marked by certain special features. My aim, then, is to show that a good case can be made for the two principles based on the fact that the original position has these features to a very high degree. (133)

Rawls also stipulates that the parties in the original position are concerned to secure for themselves as large a share as possible of primary goods. These primary goods are rights, liberties, opportunities, income, wealth and self-respect. These goods are things that it seems that any person will want no matter what else it is he or she wants. No matter what their conception of the good life people need the liberty, opportunity and economic resources to pursue their dreams. This concept of primary goods allows Rawls to claim that his theory of justice is still neutral with respect to competing conceptions of the good because this, as he calls it, “thin” theory of the good is consistent with all different ideas of the good life. In essence, it does not make any controversial assumptions about what people want or need. This concept also gives the parties in the original position a way of deciding between alternative principles of justice. It is simple; they just pick those principles that provide them with the greatest number of primary goods. When all of these various concepts are taken together Rawls’ claim about the strains of commitment begins to make sense. Because the parties in the original position are choosing principles of justice that are to, in large part, determine their life prospects, obviously the only life they get, they will adopt the maximin rule and protect themselves against the worst eventualities. Because they want to make sure that they will be able to realize their dreams and pursue their projects the parties will choose that conception of justice in which they are guaranteed a fair, minimum share of primary goods. Justice as fairness seems to be that conception because it guarantees that the basic liberties of citizens are protected and structures inequalities to the benefit of the least advantaged members of society. This is a strong reason to prefer the two principles of justice to several familiar alternatives, such as utilitarianism, libertarianism and communitarianism. Because utilitarianism solely seeks the greatest good for the greatest number, in a utilitarian society some citizens might be required to sacrifice their hopes and ambitions so that others can live lives of comfort and opulence.

For example, it has sometimes been held that under some conditions the utility principle justifies, if not slavery or serfdom, at any rate serious infractions of liberty for the sake of greater social benefits. We need not consider here the truth of this claim. . . . This contention is only to illustrate the way in which conceptions of justice may allow for outcomes which the parties may not be able to accept. And having the ready alternative of the two principles of justice which secure a satisfactory minimum, it seems unwise, if not irrational, for them to take a chance that these conditions are not realized. (135)

A variant of this same objection can be leveled against libertarianism. In a libertarian society some citizens born into families that are destitute and starving would be forced to work for almost nothing, while billionaires who inherited their vast fortune from their parents profit off the suffering of the poor. In fact, there seems to be empirical evidence to confirm these worries. Jeremy Bentham once performed a complicated and contorted series of calculations and came to the conclusion that the American institution of slavery was justified by the principle of utility. When the Industrial Revolution swept Britain and the U. S. the rapidly expanding masses of poor people were exploited by the robber baron capitalists in just the way one would expect in a libertarian society that gave free reign to the market economy. The communitarian stance on justice would also be rejected in the original position because the parties would not want to risk that they could end up being in an unpopular religious or political minority that is suppressed in the name of the “social good” or “community values.” To summarize, the parties would choose the two principles of justice to protect themselves in all cases by securing for themselves enough primary goods to realize their goals even in the worst of scenarios. The two principles of justice give this protection by providing for the least advantaged members of society and remaining neutral between competing conceptions of the good life in assigning basic rights and liberties.

The second and third reasons why the parties in the original position would select the two principles of justice to govern the basic structure of society involve considerations of self-respect and the Kantian injunction to treat people as ends in themselves never merely as a means to an end. I group these reasons together because they are related in a way that is explained in this next piece of evidence that is rather long but very good.

Furthermore, the public recognition of the two principles gives greater support to men’s self-respect and this in turn increases the effectiveness of social cooperation. Both effects are reasons for agreeing to these principles. It is clearly rational for men to secure their self-respect. A sense of their own worth is necessary if they are to pursue their conception of the good with satisfaction and to take pleasure in its fulfillment. Self-respect is not so much a part of any rational plan of life as the sense that one’s plan is worth carrying out. Now our self-respect normally depends upon the respect of others. Unless we feel that our endeavors are respected by them, it is difficult if not impossible for us to maintain the conviction that our ends are worth advancing. . . . Moreover, one may assume that those who respect themselves are more likely to respect each other and conversely. Self-contempt leads to contempt of others and threatens their good as much as envy does. Self-respect is reciprocally self-supporting.

Thus a desirable feature of a conception of justice is that it should publicly express men’s respect for one another. In this way they insure a sense of their own value. Now the two principles achieve this end. For when society follows these principles, everyone’s good is included in a scheme of mutual benefit and this public affirmation in institutions of men’s endeavors supports men’s self-esteem. The establishment of equal liberty and the operation of the difference principle are bound to have this effect. . . . Another way of putting this is to say that the principles of justice manifest in the basic structure of society men’s desire to treat one another not as means but only as ends in themselves. I cannot examine Kant’s view here. Instead I shall freely interpret it in the light of the contract doctrine. The notion of treating men as ends in themselves and never as only a means obviously needs an explanation. . . . If the parties wish to express this notion visibly in the basic structure of their society in order to secure each man’s rational interest in his self-respect, which principles should they choose? Now it seems that the two principles of justice achieve this aim: for all have equal basic liberties and the difference principle interprets the distinction between treating men as a means only and treating them also as ends in themselves. To regard persons as ends in themselves in the

basic design of society is to agree to forgo those gains which do not contribute to everyone's expectations. By contrast, to regard persons as means is to be prepared to impose on those already less favored still lower prospects of life for the sake of the higher expectations of others. (155-7)

In a utilitarian or libertarian or communitarian society some might be sacrificed for the sake of a greater good or absolute property rights or communal values. In the liberal society governed by the two principles of justice people do not run this risk; no matter where they end up in the social system they will be able to maintain their self-respect and advance their ends. This second reason to choose the two principles of justice to govern the basic structure of society is bound up with the third reason, as Rawls explained. For if each person is included in a social scheme of mutual benefit and no one is forced to sacrifice his or her sense of worth so that others can gain then clearly all people are being respected as ends in themselves. In this way the difference principle is an interpretation of the second formulation of the categorical imperative provided by Immanuel Kant in *The Foundations of the Metaphysics of Morals*. In plain terms designed to make the idea seem compelling, in a society governed by the two principles of justice no one is forced to work hard each day and do all he or she can to advance the ends of social cooperation so that the lucky few favored by nature and fate can reap hugely disproportionate rewards. This is what it means to respect all people as ends when designing principles of justice.

There are just a couple of points that remain to be discussed. First, I mentioned earlier that Rawls believes that the parties in the original position would lexically order the principles of justice; in other words, they would give priority to the first principle when there was a conflict between the two principles. Why is this? Rawls' argument here is fairly simple. Because the parties in the original position conceive of themselves, and are represented, as free and equal persons, with a conception of the good they want to advance, what is clearly going to be most important to them is that they are left free to pursue their ends. They will not accept greater economic benefits at the expense of losing part of their status as free citizens entitled to make their own decisions about what is important to them in life. Essentially, Rawls is appealing back to a conception of the person that is implicit in the way he has designed the original position. Rawls conceives of people as having the power to form a rational life plan and to pursue that plan in imaginative and inspiring ways. People have the ability, unique among animals, to look to the future and reflect on their existence, and the parties will not be willing to sacrifice the freedom to do these things for the sake of greater economic advantages. To do so would be to sacrifice their humanity in the name of greed. This intuitive way of formulating the idea obviously puts it too strongly and Rawls' lexical ordering of the two principles of justice has actually been a matter of contention in the philosophical literature surrounding his theory. But, at any rate, that is the essence of his argument for the priority of liberty, for better or worse.

The final point about the Rawlsian theory of justice that needs to be cleared up is the meaning of the just savings principle. Rawls acknowledges that questions of justice can arise between generations, as is exemplified in political disputes about protecting the environment for the sake of future generations. To handle these matters he incorporates a stipulation in the design of the original position. The parties to the original position know that they are selecting principles of justice to govern the basic structure of their society, but they do not know in what generation of that society they will live. In other words, they cannot adopt the principle that nothing be saved for their descendants without also harming themselves, since that means preceding generations of that society will also not have saved for them. Therefore, the parties in the original position would find it rational to incorporate a just savings clause into the second principle that specifies a certain amount of money that must be set aside for future generations.

At this point our examination of the Rawlsian theory of justice is now complete. Before turning to Nozick, however, I would like to make a few suggestions and comments. If you use Rawls' theory in a round you must provide analysis or empirical evidence to demonstrate that affirming or negating the

resolution is the only way to remain consistent with the principles of justice. This is the crucial last step in the argument that cannot be forgotten. This will be relatively easy on certain topics, like perhaps a topic on the justice or injustice of the welfare state. It is obvious that the two principles of justice establish a welfare state in preference to a libertarian system in which property rights are accorded absolute respect. So on some topics this last step in the argument will be the easiest. On other resolutions it may not be clear which side the two principles of justice seem to favor. In fact, there are some topics on which it would be unwise to use the Rawlsian theory of justice. For example, Rawls does provide some guidance on when the basic liberties protected by the first principle are to be limited. They are to be limited when there is a clear danger to public order and security. But on a topic like whether or not to limit hate speech on college campuses the issue to be debated is precisely that. Does hate speech constitute a clear danger to public order and security? I would suggest that you run the Rawlsian theory of justice only if there are clear arguments that can be made that the two principles of justice favor a certain side of the resolution. If you cannot find said arguments, then the topic probably poses a question that has to be adjudicated either within or completely outside of the framework of the Rawlsian theory of justice.

Also, if you are using Rawls' theory in a round you obviously will not be able to make all of the arguments that I have elaborated in this essay. I wanted to make my discussion as comprehensive as possible, but that is definitely not a luxury you have in debate rounds. When you are using Rawls in a debate round and you are pressed for time as far as what arguments you can include in your case I would advise selecting the first reason I gave for why the original position is a good criterion for justice and the first reason I gave for why the parties in the original position would choose the two principles of justice. These arguments comprise the essential components of the theory.

Finally, I would like to explain why I include such long quotations from the works I am discussing. There are several things that I hope to accomplish by doing this. In reading these passages from the original work as you follow my explanation of it I would like you to do some interpreting of the theory on your own and not just accept what I say as the gospel (like anyone would do that). There is certainly a lot of dispute about how to interpret Rawls' theory and I like to think that these quotations provide textual evidence for my hopefully uncontroversial understanding of what Rawls is saying. These excerpts should also allow you to have a better sense of the theory as Rawls himself would have you understand it. Besides, Rawls can explain his reasons for thinking certain things much better than I can (what do you expect, he's a Professor, Emeritus, at Harvard University and I'm a college student at OU). Lastly, these selections would obviously have to be trimmed in order to use them in a debate round, but correctly cut these are the pieces of evidence that I would recommend using in a round if you are relying on a Rawlsian interpretation of justice. Because these considerations also apply to the other theories I will be discussing, I will continue this policy of quoting extensively throughout the rest of the essay.

Now we turn to the libertarian take on justice found in *Anarchy, State, and Utopia* by Robert Nozick. By way of a brief summary, Nozick's entitlement theory of justice can be used to argue against redistributive economic policies. The type of government Nozick favors is a minimal state in which certain basic rights are protected and other than that people are left free to do as they wish. His theory can be used to cast doubt on any argument that purports to justify government intrusion into people's lives.

Nozick conceives of the subject of distributive justice, or justice in holdings, as involving three major parts. First, we want to know when we can say that someone has justly acquired something, then how they can justly transfer what they have justly acquired, and lastly how to rectify violations of the previous two principles. These are complicated questions and Nozick admits that he does not satisfactorily answer them. However, if we assume that we have found acceptable answers to these difficult questions, then we can formulate a definition of distributive justice. Nozick formulates that definition as follows:

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to that holding, is entitled to that holding.
3. No one is entitled to a holding except by applications of 1 and 2.

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.

A distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first “moves” are specified by the principle of justice in acquisition. Whatever arises from a just situation by just steps is itself just.  
(151)

Nozick refers to his conception of distributive justice as the entitlement theory. At this stage in the argument he introduces a crucial distinction between historical principles of justice and current time-slice principles of justice.

The general outlines of the entitlement theory illuminate the nature and defects of other conceptions of distributive justice. The entitlement theory of justice in distribution is historical; whether a distribution is just depends on how it came about. In contrast, current time-slice principles of justice hold that the justice of a distribution is determined by how things are distributed as judged by some structural principle(s) of just distribution. A utilitarian who judges between any two distributions by seeing which has the greater sum of utility and, if the sums tie, applies some fixed equality criterion to choose the more equal distribution, would hold a current time-slice principle of justice.  
(154)

Very few theories of distributive justice are composed exclusively of current time-slice principles. Almost any theorist will want to know something about how people acquired what they have before judging the justice of a distribution of things. However, this is not sufficient to make her view of justice a historical one. For almost any theorist will also have some structural principle by which she, at least in part, normatively evaluates distributions of things. For Rawls that would be the difference principle and, as we will find out later, for Sandel that would be the republican ideal of self-government. Nozick calls these principles of distributive justice that incorporate some historical information but also rely on structural ideals end-state principles of justice. He also refers to these as patterned principles of justice because they contain certain configurations of holdings that they demand be realized. An example of a patterned principle of justice is the famous Marxist formulation “from each according to ability to each according to need.” Nozick is going to argue that his entitlement view exposes the flaws in these competing theories of distributive justice.

Nozick has two major objections to end-state principles of distributive justice. The first is that they require continuous interference in people’s lives. This is true, Nozick argues, because if people were given the liberty to exchange goods and interact economically the patterns that these end-state principles specify would be upset.

It is not clear how those holding alternative conceptions of distributive justice can reject the entitlement conception of justice in holdings. For suppose a distribution favored by one of these non-entitlement conceptions is realized. Let us suppose it is your favorite one and let us call this distribution D1; perhaps everyone has an equal share, perhaps shares vary in accordance with some dimension you treasure. Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction. He signs the following sort of contract with a team: in each home game, twenty-five cents from the price of each ticket of admission goes to him. The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it. They are excited about seeing him play; it is worth the total admission price to them. Let us suppose that in one season one million persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger even than anyone else has. Is he entitled to this income? Is this new distribution, D2, unjust? Is so, why? There is no question about whether each of the people was entitled to the control of the resources they held in D1; because that was the distribution that we assumed was acceptable. Each of these persons chose to give twenty-five cents of their money to Chamberlain. . . . If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1, isn't D2 also just? (160-1)

This simple but much discussed example illustrates the way that end-state principles of distributive justice demand continuous interference in people's lives if they are to be realized.

The general point illustrated by the Wilt Chamberlain example . . . is that no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives. Any favored pattern would be transformed into one disfavored by the principle, by people choosing to act in various ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern. To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or continually interfere to take from some persons resources that others for some reason chose to transfer to them. (163)

Nozick's argument here is fairly self-explanatory and does not require belaboring. The reason that all contemporary governments have taxation schemes is that they cannot realize certain end-state principles, like maintaining a minimum standard of living, without those forms of coercion. Even more important, those redistributive policies are not merely an interference, they are an injustice. Hence Nozick's second argument against end-state principles of distributive justice; they violate people's rights. This next piece of evidence warrants that claim; it is a rather long quotation, but it is important that it all be included because this claim is at the heart of Nozick's entitlement theory.

Patterned principles of distributive justice necessitate redistributive activities. The likelihood is small that any actual freely-arrived-at set of holdings fits a given pattern; and the likelihood is nil that it will continue to fit the pattern as people exchange and give. From the point of view of an entitlement theory, redistribution is a serious matter indeed, involving, as it does, the violation of people's rights. From other points of view, also, it is serious.

Taxation of earnings from labor is on a par with forced labor. . . . What sort of right over others does a legally institutionalized end-state pattern give one? The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted. The constraints are set by other principles or laws operating in the society; in our theory, by the Lockean rights people possess. My property rights in my knife allow me to leave it where I will, but not in your chest. I may choose which of the acceptable options involving the knife is to be realized. . . . When end-result principles of distributive justice are built into the legal structure of a society, they give each citizen an enforceable claim to some portion of the total social product; that is, to some portion of the sum total of the individually and jointly made products. This total product is produced by individuals laboring, using means of production others have saved to bring into existence, by people organizing production or creating means to produce new things or things in a new way. It is on this batch of individual activities that patterned distributional principles give each individual an enforceable claim. Each person has a claim to the activities and the products of other persons, independently of whether the other persons enter into particular relationships that give rise to these claims, and independently of whether they voluntarily take these claims upon themselves, in charity or in exchange for something.

Whether it is done through taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big social pot so that it's not clear what's coming from where and what's going where, patterned principles of distributive justice involve appropriating the actions of other persons. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.

End-state and most patterned principles of distributive justice institute ownership by others of people and their actions and labor. (168-72)

Basically, end-result principles of distributive justice violate people's rights because they take things those people are entitled to and give them to others forcibly. In fact, these principles give people a partial property right to other people. Intuitively, we want to reject a conception of distributive justice if it has this absurd consequence, and it seems that this consequence is unavoidable with end-state principles of justice. At this point, it is not difficult to imagine on what grounds Nozick is going to criticize the Rawlsian theory of justice. It is to that issue that we now turn.

Nozick develops his critique of Rawls over fifty very complicated pages in *Anarchy, State, and Utopia*; therefore, I will obviously not be able to recount all of his arguments and claims. Instead, I hope to describe the most important reasons Nozick has for rejecting the Rawlsian conception of justice. On his reading of Rawls, Nozick posits that the crux of Rawls' theory is his treatment of natural assets and abilities (and the unequal social circumstances that are, over time, the result of the arbitrary allocation of natural assets and abilities). For it is as a result of his view that the distribution of natural assets and abilities is arbitrary from a moral point of view and should not be allowed to influence arguments for justice that Rawls designs the original position in the way that he does. Since the original position is the concept from which Rawls derives all of his major arguments for his two principles of justice, to examine



the adequacy of those two principles we must inspect the basis for the design of the original position that leads to them. Nozick presents two reasons why we should be skeptical of the Rawlsian view of natural assets and abilities. First, he argues that to say a person deserves something you do not have to assume that he or she deserved everything they used to create or earn that thing.

It is not true, for example, that a person earns Y only if he's earned whatever he used in the process of earning Y. Some of the things he just may have, not illegitimately. It needn't be that the foundations underlying desert are themselves deserved, all the way down. (225)

This is a plausible claim. For example, John Rawls may not have deserved the natural intelligence he utilized in writing *A Theory of Justice*, but people praise him and his work all the same. It does not seem to conform to intuition to say that a person only deserves something, for example the wages she earns from her job, if she deserves every single thing that she used in the process of acquiring that thing, getting or performing the job. Moreover, Nozick emphasizes, to deny the Rawlsian claim you don't even have to argue that we deserve our natural assets, merely that we are entitled to them, and therefore the benefits we gain from them. It would seem outrageous to claim that I am not entitled to my height that allows me to play basketball well, or some other such characteristic that allows me to do certain things well. In fact, Nozick provides an interesting and original argument to show that the claim that we are not entitled to our natural assets because our having them is morally arbitrary is a precarious one indeed.

Whether or not people's natural assets are arbitrary from a moral point of view, they are entitled to them, and to what flows from them. If nothing of moral significance could flow from what was arbitrary, then no particular person's existence could be of moral significance, since which of the many sperm cells succeeds in fertilizing the egg cell is arbitrary from a moral point of view. This suggests another, more vague, remark directed to the spirit of Rawls' position rather than to its letter. Each existing person is the product of a process wherein the one sperm cell which succeeds is no more deserving than the millions that fail. Should we wish that process had been "fairer" as judged by Rawls' standards, that all "inequities" in it had been rectified? We should be apprehensive about any principle that would condemn morally the very sort of process that brought us to be, a principle that therefore would undercut the legitimacy of our very existing. (226)

This is one of the best and most intriguing responses I have heard to the so-called "natural lottery" argument which is often used in debate rounds. One of the major advantages of using Nozick in debate is that he often approaches things in the most original ways that are still yet intuitively appealing and not too difficult to understand. At this point in the argument we have found cause to doubt the reasons Rawls gives for structuring the original position in the way he does. Once the basis for the original position is gone the Rawlsian theory of justice begins to crumble, as Nozick notes:

Rawls' view seems to be that everyone has some entitlement or claim on the totality of natural assets, with no one having differential claims. The distribution of natural abilities is viewed as a "collective asset." . . . People will differ in how they view regarding natural talents as a common asset. Some will complain, echoing Rawls against utilitarianism, that this "does not take seriously the distinction between persons"; and they will wonder whether any reconstruction of Kant that treats people's abilities and talents as resources for others can be adequate. "The two principles of justice . . . rule out even the tendency to regard men as means to one another's welfare." Only if one presses very hard on the distinction between men and their talents, assets, abilities, and special traits. Whether any coherent conception of a person remains when the distinction is so

pressed is an open question. Why we, thick with particular traits, should be cheered that the thus purified men within us are not regarded as means is also unclear. (228)

If we reject the reasons Rawls gives for structuring the original position in the way that he does then we have no reason to accept the two principles of justice, even if they are the ones that the parties in the original position would accept, because the original position is no longer a good criterion for justice. Furthermore, our arguments against the way the original position is designed have now also given us cause to question the Rawlsian conception of the person and the propriety of the difference principle. For if people are entitled to their natural assets then a proper conception of the person should account for that fact rather than deny it, and the difference principle should not regard the natural abilities of people as common assets for society, in essence giving a society stock in its citizens as if they were commodities to be owned or exchanged. So the Rawlsian attempt to justify redistributive economic policies in conflict with the entitlement theory has failed.

With our discussion of the Nozickian view of justice complete, we now turn to criticisms of the entitlement theory. But before I dive into these issues, I should present one further feature of the Nozickian view that has often been overlooked by its critics. Many will reject the libertarian position on justice out of hand, because it is inconsistent with their basic belief that the poor, the sick and the hungry should be provided for even if it means that Bill Gates could only spend all of his money in 862 lifetimes rather than 893. This way of putting the idea is meant to make explicit how very out of touch with our intuitions the entitlement view is. Under this conception of justice the state could not perform such normal functions as collecting taxes or making laws to regulate businesses. In fact, there is very little the state can do and still remain consistent with the libertarian strictures against violating individual rights. However, it must be emphasized that Nozick is not discussing the justice or injustice of the actual distribution of property in any particular society. The principle of rectification must be invoked and applied if the first two principles of justice in holdings are violated, and no policy of redistribution in any particular society can be condemned until we examine if it might be required by the principle of rectification.

We began this chapter's investigation of distributive justice in order to consider the claim that a state more extensive than the minimal state could be justified on the grounds that it was necessary, or the most appropriate instrument, to achieve distributive justice. According to the entitlement conception of justice in holdings that we have presented, there is no argument based upon the first two principles of distributive justice, the principles of acquisition and transfer, for such a more extensive state. If the set of holdings is properly generated, there is no argument for a more extensive state based upon distributive justice. If, however, these principles are violated, the principle of rectification comes into play. Perhaps it is best to view some patterned principles of distributive justice as rough rules of thumb meant to approximate the general results of applying the principle of rectification of injustice. For example, lacking much historical information, and assuming (1) that victims of injustice generally do worse than they otherwise would and (2) that those from the least well-off group in the society have the highest probabilities of being the victims of the most serious injustice who are owed compensation by those who benefited from the injustices, then a rough rule of thumb for rectifying injustices might seem to be the following: organize society so as to maximize the position of whatever group ends up least well-off in the society. This particular example may well be implausible, but an important question for each society will be the following: given its particular history, what operable rule of thumb best approximates the results of a detailed application in that society of the principle of rectification? These issues are very complex and are best left to a full treatment of the principle of rectification. In the absence of such a treatment applied to a particular society, one

cannot use the analysis and theory presented here to condemn any particular scheme of transfer payments, unless it is clear that no considerations of rectification of injustice could apply to justify it. Although to introduce socialism as the punishment for our sins would be to go too far, past injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them. (231)

Thus the entitlement theory of justice might authorize the U. S. government to redistribute resources to Native Americans and African-Americans as rectification of the historical injustice done to them. In fact, if you are ever in a debate round where your opponent uses Nozick to argue against any redistributive economic policies you might want to explore this avenue of response; you can accept the Nozickian view your opponent relies on while disputing the conclusions he or she draws from it, and this is clearly recognized by Nozick himself. Do not assume that the entitlement theory automatically dejustifies any scheme of transfer payments in any society. With this fact clearly in mind the Nozickian view of justice becomes a good deal more plausible. For the entitlement view, when applied to actual societies, might require increasing rather than eliminating welfare payments to the disadvantaged. If particular societies were to compensate for historical violations of the first two principles of the entitlement theory and, in essence, wipe the slate clean, it would then be much more in line with intuition to say that all parties should be free to compete on a fair Nozickian playing field. This clarification of the entitlement view was merely meant to head off the criticism that this theory is clearly at odds with our considered judgments about justice. It might turn out that the entitlement theory is wrong, but it is much more plausible that it might initially seem when the principle of rectification is kept in mind.

Numerous arguments have been formulated against the entitlement conception of justice, many more than I could adequately address here. Consequently, I will focus on two major objections to the libertarian theory that recur in the commentary on Nozick. First, the argument given by Nozick that an end-state principle of justice must demand continuous interference with people's lives is clearly an exaggeration. Chandran Kukathas and Philip Pettit explain this objection:

The state which Rawls' theory supports would not continually interfere with people in the manner suggested by Nozick. There is a great difference, and Nozick carefully ignores it, between a rule of law under which it is publicly known that a structural ideal dictates taxation policy and a regime which allows the state to interfere with people as occasion arises. (89)

The Rawlsian theory of justice is just one of the end-state conceptions of distributive justice that would not require the extreme measures that Nozick imagines they would. When the U. S. government takes a certain amount of your earnings in taxes before you even receive your check every two weeks they are not heinously and constantly interfering in your life in the way Nozick suggests they must to realize their goals. This leaves open the question, however, of whether such taxation is a violation of your rights. The second objection to the entitlement theory disputes the assertion that redistributive policies necessarily violate certain rights. To begin with, it is difficult to evaluate the merits of his position when Nozick ignores several important issues. Norman Bowie and Robert Simon explain:

Unfortunately, as Nozick himself seems to concede, he does not offer a full-fledged theory of acquisition or indeed of what it means to own anything. With respect to the former there is no discussion of what counts as fraudulent acquisition. Stealing is clearly illegitimate since it violates one's right to liberty. Is advertising legitimate? Even subliminal advertising? Can one prey upon the ignorance of the poor? Must products be proven safe? With respect to the concept of ownership, when does someone own something? Can property owners forbid jet planes to fly over their homes? Do the

minerals at the bottom of the ocean or on Mars belong to the person who gets there first?  
What account can be given of public goods or collective ownership?

Nozick's account of justice is severely limited in scope. . . . By failing to place some constraints on the means of acquisition and by failing to define how someone can be said to own something, many of the important issues are ignored. (100)

Nozick merely assumes that the principles of acquisition and transfer, when satisfactorily developed, will specify absolute property rights that individuals have which cannot be violated for almost any reason. But is this not precisely the issue that is in contention? Whether or not property rights are absolute or can be limited for the sake of other goals is the question being debated, and in bypassing this fundamental question Nozick leaves his entitlement theory without justification or grounding. The one foundation Nozick does suggest for our rights is that they express our separateness as persons and reflect the fact that no one person can justifiably be sacrificed for the sake of another. However, it is far from obvious that this foundation would lead us to construct a system of rights in which property entitlements were absolute. Thomas Scanlon writes that:

Many different conditions are important for the development of autonomous preferences, and the ability of individuals to give effect to their preferences in their own lives and in the determination of social policy depends on a variety of powers and liberties. To give appropriate recognition to the value of individual autonomy a theory must assign appropriate weights to all these factors in balancing them against each other and against other competing considerations. Autonomy is not adequately recognized simply by letting those weights and all others be determined by whatever constellation of individual preferences happens to prevail at the point at which the theory is applied. (121-2)

A system of rights and entitlements that best protect individual autonomy and human dignity will most likely not be one in which certain individuals are allowed to accumulate massive amounts of money while others starve, as almost certainly would happen at least sometimes in a society founded on libertarian principles. Thus it appears that Rawls has resources for responding to the Nozickian critique of his theory. Producing a conception of justice that respects our supposed entitlement to our natural assets and abilities does not seem to respect individual autonomy in the way Nozick had hoped for. Whether or not these counterarguments to Nozick are decisive is unfortunately not a question I can address here. I merely want to expose you to all the different viewpoints surrounding these elegant theories of justice. With that goal in mind, we will now turn to the final theory to be considered.

The last position to be covered is the communitarian stance articulated by Michael Sandel in his works *Liberalism and the Limits of Justice* and *Democracy's Discontent*. One major obstacle to be faced in explicating the views of Sandel is that he has not extensively developed his personal beliefs about what the aims and actions of a government should be. Sandel made a name for himself in the early 1980s when he published *Liberalism and the Limits of Justice*, a powerful critique of liberalism as represented by Rawls. Sandel was the first to be labeled a communitarian critic of liberalism and gradually various others like Michael Walzer and Charles Taylor came to be included under that banner. *Liberalism and the Limits of Justice* does present a compelling case against Rawlsian liberalism; however, in that work Sandel does not really provide an alternative way of identifying and structuring a just government. In *Democracy's Discontent* Sandel begins to sketch an alternative to liberal political theory. But his suggestions are sparse and do not receive much elaboration so my presentation of them will also be brief. I will present his critique of Rawls in more detail because that is the most important and well-developed part of Sandel's work to date. I should mention that the work of Sandel is probably the most abstract and difficult to apply to debate of all three theories we are considering. His personal views on political theory are only partially developed and his critique of Rawls is very theoretically sophisticated. It is certainly

not impossible to use Sandel in a debate round, you just have to carefully consider in what way you are going to explicate and present his ideas. I hope to provide some suggestions in this regard as I go along in presenting his views. While demanding, Sandel's work is the most philosophically sound and substantive of the communitarians that are used in debate rounds. It is important to be aware of Sandel's critique of liberalism because some people consider it to be the most important attack on Rawlsian theory yet developed. Besides, if in explaining the somewhat complicated views of Sandel I can in any way lessen the amount of debaters who rely on the cliched, inane and philosophically barren writings of Amitai Etzioni to approach communitarianism I will have been more than rewarded. To put it a more calm and rational way, debaters would do well to rely on Sandel for a philosophically serious rendering of communitarianism rather than the trite slogans so often found in the work of certain other communitarians (MacIntyre, Walzer and Taylor are all capable philosophers, but they suffer along with Sandel in being neglected in debate in favor of others like Etzioni who are not political theorists and display that fact glaringly in their work).

Almost all 220 pages of *Liberalism and the Limits of Justice* are devoted to developing a critique of Rawlsian liberalism. Obviously, I cannot consider all of the arguments Sandel makes; therefore, I will focus on a few key ideas that form the core of his critique. In a new chapter added to the second edition of *Liberalism and the Limits of Justice* Sandel outlines the central issue in dispute in the debate between liberals and communitarians.

For Rawls, as for Kant, the right is prior to the good in two senses, and it is important to distinguish them. First, the right is prior to the good in the sense that certain individual rights "trump," or outweigh, considerations of the common good. Second, the right is prior to the good in that the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life. It is this second claim for the priority of the right that prompted the most recent wave of debate about Rawlsian liberalism, an argument that has flourished in the 1980s and 1990s under the somewhat misleading label of the liberal-communitarian debate.

A number of political philosophers writing in the 1980s took issue with the notion that justice can be detached from considerations of the good. Challenges to contemporary rights-oriented liberalism found in the writings of Alasdair MacIntyre, Charles Taylor, Michael Walzer, and also in my own work, are sometimes described as the "communitarian" critique of liberalism. The term "communitarian" is misleading, however, insofar as it implies that rights should rest on the values or preferences that prevail in any given community at any given time. Few if any of those who have challenged the priority of the right are communitarians in this sense. The question is not whether rights should be respected but whether rights can be identified and justified in a way that does not presuppose any particular conception of the good. At issue in the third wave of debate about Rawls' liberalism is not the relative weight of individual and communal claims but the terms of relation between the right and the good. (185-6)

This quotation should hopefully help to clear up a misunderstanding that often plagues communitarianism. When many debaters use communitarianism in rounds it seems as if they think that a communitarian would believe that individual rights are always less important than community values and that those rights can be limited whenever a majority would like to do so. It strikes me as odd that people would misinterpret communitarianism this way when they are using it, because the claims that communitarians actually do make are much more plausible than these outrageous assertions often attributed to them.

Also, while it may be true that rights require responsibilities, this platitude does not exhaust the meaning of communitarianism. While you might never know it from watching some debate rounds, communitarianism is a political theory with depth and gravity. Hopefully an investigation of Sandel's critique of liberalism will help to make this clear. Sandel develops his critique by arguing that it is a certain conception of the person that Rawls appeals to in claiming that the right is prior to the good, and that this conception is flawed in certain crucial ways.

Much of the debate about the priority of the right has focused on competing conceptions of the person, of how we should understand our relation to our ends. Are we as moral agents bound only by the ends and roles we choose for ourselves, or can we sometimes be obligated to fulfill certain ends we have not chosen – ends given by nature or God, for example, or by our identity as a member of a family or people, culture or tradition? In various ways, those who have criticized the priority of right have resisted the notion that we can make sense of our moral and political obligations in wholly voluntarist or contractual terms.

In *A Theory of Justice*, Rawls links the priority of the right to a voluntarist or broadly Kantian conception of the person. According to this conception, we are not simply defined as the sum of our desires, as utilitarians assume, nor are we beings whose perfection consists in realizing certain purposes or ends given by nature, as Aristotle held. Rather, we are free and independent selves, unbound by antecedent moral ties, capable of choosing our ends for ourselves. This is the conception of the person that finds expression in the idea of the state as a neutral framework. It is precisely because we are free and independent selves, capable of choosing our own ends, that we need a framework of rights that is neutral among ends. To base rights on some conception of the good would impose on some the values of others and so fail to respect each person's capacity to choose his or her own ends. . . . In different ways, those who disputed the priority of the right took issue with Rawls' conception of the person as a free and independent self, unencumbered by prior moral ties. They argued that a conception of the self given prior to its aims and attachments could not make sense of certain important aspects of our moral and political experience. Certain moral and political obligations that we commonly recognize – obligations of solidarity, for example, or religious duties – may claim us for reasons unrelated to a choice. Such obligations are difficult to dismiss as merely confused, and yet difficult to account for if we understand ourselves as free and independent selves unbound by moral ties we have not chosen. (186-8)

Because this claim about the incoherence of the Rawlsian conception of the person forms the basis for most of the rest of Sandel's objections to Rawls it bears repeating. Stephen Mulhall and Adam Swift provide an excellent description of the argument when they write that:

If the self is antecedently individuated, then no matter how closely it identifies with a given end, that end can never become integral to the self's identity. The characterization of such values or interests must describe the objects that I seek, not the subject that I am; my identity is fixed in advance of my choice of ends, so that a certain distance between who I am and what I value must always remain. . . . Such a conception of the self rules out the possibility of being torn between several competing values in a way which I experience as the pull of competing identities within my self; in other words, it permits no intra-subjective understandings of the self. And by the same token, it limits Rawls' understanding of the relation between a self and any other-directed end to which that self is committed. The problem Sandel detects here arises not because Rawls' conception fails to admit of the possibility that human beings may take as their goal or object the

good of another or of a group of others; it arises because such ends must be held in a way that ensures that they can be no more than the interests of a person – they can at best be possessed by the self, they cannot be integral to it. . . . In general, then, Rawls' conception of the self as antecedently individuated excludes any understanding of the relation between the self and its ends and circumstances that implies that the boundaries of the self might be disrupted, whether by personal commitment, by intra-subjective conflict or by intersubjective relationships. But human moral and political life and experience abounds with examples that can only be described in these ways. We need only think of people who build their lives around a cause and whose life is accordingly devastated by the failure of that cause; of people whose sense of themselves is torn apart by conflicting desires or aims; of our tendency to attribute responsibility and acknowledge obligations to family, tribe, class or nation as well as to individuals. What this suggests is that, if Rawls' conception of the self is an antecedently individuated conception, then it simply cannot account for some of our basic human experiences of, and attitudes towards, agency and self-reflection; it is incapable of coping with the full range of human moral circumstances and self-understanding. (51-2)

The Rawlsian conception of the person simply does not mesh with our considered notions of human identity and selfhood. This has troubling philosophical and practical consequences for the liberal theory of justice. Philosophically, it means that the liberal claim to neutrality between competing conceptions of the good is an illusion. Mulhall and Swift continue:

First, Sandel claims, commitment to this degree of neutrality in the realm of politics is founded upon a surprisingly high degree, and a surprisingly implausible kind, of non-neutrality in the realm of metaphysics. And second, this metaphysical non-neutrality seeps back into, and materially diminishes the amount of neutrality displayed in, the realm of politics and morality. For if Sandel's claim to have identified a set of necessary presuppositions about personhood at the basis of liberal thinking is correct, then a far wider range of conceptions of the good than might have been supposed will in fact be discriminated against in a truly liberal society. Why? Because a vision of the self as antecedently individuated excludes any conception of the good which allows for or presupposes constitutive personal attachments to values, projects and communities; a society built with antecedently individuated selves in mind cannot provide a home for those whose conceptions of the good are built around such constitutive attachments and so founded upon a very different conception of the person. (53-4)

The liberal theory of justice turns out to be founded on a very controversial metaphysical construct and thus the liberal state is not neutral or fair to those who do not share this contentious conception of personhood. Practically speaking, these liberal delusions of neutrality actually produce more intolerance and moralizing than they prevent. Sandel explains in *Democracy's Discontent* that:

The problems in the theory of procedural liberalism show up in the practice that it inspires. Over the past half-century, American politics has come to embody the version of liberalism that renounces the formative ambition and insists government should be neutral toward competing conceptions of the good life. Rather than tie liberty to self-government and the virtues that sustain it, the procedural republic seeks a framework of rights, neutral among ends, within which individuals can choose and pursue their own ends.

But the discontent that besets American public life today illustrates the inadequacy of this solution. A politics that brackets morality and religion too completely soon generates its own disenchantment. Where political discourse lacks moral resonance, the yearning for a public life of larger meaning finds undesirable expression. Groups like the Moral Majority seek to clothe the naked public square with narrow, intolerant moralisms. Fundamentalists rush in where liberals fear to tread. The disenchantment also assumes more secular forms. Absent a political agenda that addresses the moral dimension of public questions, attention becomes riveted on the private vices of public officials. Political discourse becomes increasingly preoccupied with the scandalous, the sensational, and the confessional as purveyed by tabloids, talk shows, and eventually the mainstream media as well. It cannot be said that the public philosophy of contemporary liberalism is wholly responsible for these tendencies. But its vision of political discourse is too spare to contain the moral energies of democratic life. It creates a moral void that opens the way for intolerance and other misguided moralisms. (322-3)

Sandel believes we can avoid these dangers of liberalism by reviving the republican ideal of self-government. The republican political tradition, involving such great thinkers as Jefferson and Tocqueville, ties the liberty of citizens to their ability to govern themselves and to cultivate those virtues necessary for a healthy political sphere. Republicanism is also honest about the need to invoke certain fundamental ideas about what is good for human beings in making arguments for political principles. These are some of the very few suggestions Sandel provides for constructing an alternative to the liberal state. This has to do partially with Sandel failing to develop his personal views about the just state, and also is a direct consequence of his own critique of liberalism. Because Sandel wants communities to govern themselves and engage in a spirited political dialogue about what is good for human beings and how political institutions can help to secure that good, in some sense he has to forego specifying his views in favor of urging communities to develop their own. Sandel cannot articulate precise principles of justice because they have to be crafted by particular communities on the basis of their best self-understanding, and the results of these political processes are not things Sandel can read the future and predict, nor would he want to. Put simply, Sandel does not so much advocate particular principles of justice as a theory for arriving at those principles.

There are two main criticisms of this communitarian critique of Rawls that need to be noted. First, in leaving his own views vague and indeterminate Sandel does not make it clear in what ways the substantive principles of justice he would endorse would be different from liberal principles. Sandel wants to allow communities to legislate according to their own best self-understanding, but at the same time he wants to argue that individual rights should not be restricted whenever the community desires to do so. If a community decided to limit certain individual rights it is unclear on what grounds Sandel would criticize their decision or consider it to be unjust. Perhaps he would argue that the community had incorrectly evaluated their own interests and values. But then Sandel seems to be claiming that a community should live according to its values if he happens to share those values. Who is he to criticize the decisions of a certain community about what is best for their own particular association, especially considering that according to his own theory principles of justice are to be reached by exactly that process of republican self-government? These important questions are never answered by Sandel, at which point it seems that Rawls could reply to the theory of his critic that there really is no theory at all. It does not seem that Sandel can fairly criticize Rawls unless he is prepared to specify and defend principles of justice other than liberal principles.

Second, at times it seems that Sandel's attack on the Rawlsian conception of the person is more smoke and mirrors than substance. For surely Sandel will not claim that a person's identity is completely constituted by the community of which he or she is a part. At which point it seems reasonable to wonder how communally oriented a conception of the person would have to be to satisfy Sandel. Is there some



clear line of demarcation that must be met? What sorts of things about people need to be specified? None of these matters are dealt with, because Sandel does not really propose his own conception of the person. Once again, it is not clear how Sandel can criticize liberalism when he has not managed to defend any conclusions that are contrary to liberalism. Take Sandel's argument that many religious believers will feel that they must pursue ends that have been laid down for them by God, independent of their own choice. While that may be true, it seems that you would be hard pressed to find people who would claim that God forced them to follow his pronouncements. At which point it appears that a liberal could reply that even religious persons admit that they make a choice to pursue those ends laid down for them by God. These issues can become rather complicated and intricate, and we certainly could not hope to completely resolve them here.

By way of concluding my discussion of Sandel I would like to mention one last thing. Rawls published a second book in 1993 entitled *Political Liberalism*. Some of the modifications Rawls makes to his theory in that book can be seen as providing him with resources for further responses to the communitarian challenge to his position. This is not to say that Rawls made those changes for that reason, merely that they have that consequence. I would love to be able to discuss those issues here, but to do so would require at least another ten pages and would thus make this essay simply too long. The changes Rawls made to his theory were important enough for him to devote a whole book to them, and I could not do justice to them here without turning this essay into a warm-up for my doctoral dissertation. Interested readers should consult *Political Liberalism* and the new chapter Sandel added to the second edition of *Liberalism and the Limits of Justice* that is a response to the changes Rawls makes to his theory in *Political Liberalism*. Those with too much time on their hands could also consult *Liberals and Communitarians* by Stephen Mulhall and Adam Swift. Chapters 5 and 6 address the changes to Rawls' theory and how that affects the liberal-communitarian debate.

That about wraps it up for our examination of three influential theories of justice. In concluding I would like to stress that you should read the works of these philosophers for yourselves. They are intellectually stimulating and could help you win a number of debate rounds. Reading all of the major works of these philosophers would be a daunting task but, luckily, there are some short cuts you can take to make things a bit easier on yourself. Rawls himself acknowledges in the preface to *A Theory of Justice* that it is a rather long work and suggests certain sections of the book that can be read in order to understand the essentials of the theory. These sections total up to less than half of the 500-page book, making it a much easier read. The other sections are obviously still important and you should read them if you can, but as Rawls himself suggests, you should only feel compelled to read those sections that catch your interest or apply to a problem you are investigating. This is further explained by Rawls in the preface. One could learn everything they need to know about Robert Nozick for debate by reading Part II of *Anarchy, State, and Utopia*. This is about 150 pages, less than half the total for the book. *Liberalism and the Limits of Justice* by Michael Sandel is only about 200 pages and therefore all of it should be read. *Democracy's Discontent* is far less helpful than its predecessor, and it does not make many important arguments not already found in *Liberalism and the Limits of Justice*. The book is interesting and easy to read, but there is not much reason you would need to read it for debate; if you do though, the first and last chapters are the most important along with the conclusion. There is also an abundance of good secondary literature about these major works. As I already mentioned, *Liberals and Communitarians* by Mulhall and Swift is an excellent resource. It provides an extended look at the views of all four major communitarians (MacIntyre, Walzer, Taylor and Sandel) and is a helpful guide to the later work of Rawls. *Reading Nozick* is a collection of essays edited by Jeffrey Paul devoted to critically analyzing *Anarchy, State, and Utopia*. For important objections to the entitlement theory of justice the essays by Thomas Scanlon and Thomas Nagel are particularly good. *Rawls* by Chandran Kukathas and Philip Pettit is a brief but enlightening summary of the views of the earlier and later Rawls and the criticisms developed by Nozick and Sandel against Rawls. The book is clear, to the point and short enough (about 150 pages) to not be a

burden to read. Finally, the book *Liberalism and its Critics* edited by Sandel contains selections from almost all of the important contemporary liberals, libertarians and communitarians.

### Bibliography

Bowie, Norman, and Robert Simon. *The Individual and the Political Order*. 2<sup>nd</sup> ed. Englewood Cliffs, NJ: Prentice-Hall, 1986.

Kukathas, Chandran, and Philip Pettit. *Rawls*. Stanford: Stanford UP, 1990.

Mulhall, Stephen, and Adam Swift. *Liberals and Communitarians*. Cambridge, MA: Blackwell Publishers, 1992.

Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.

Rawls, John. *A Theory of Justice*. Revised ed. Cambridge: Harvard UP, 1999.

---. *Political Liberalism*. New York: Columbia UP, 1993.

Scanlon, Thomas. "Nozick on Rights, Liberty, and Property." *Reading Nozick*. Ed. Jeffrey Paul. Totowa, NJ: Rowman & Littlefield, 1981. 107-29.

Sandel, Michael. *Liberalism and the Limits of Justice*. 2<sup>nd</sup> ed. Cambridge: Cambridge UP, 1998.

---, ed. *Liberalism and its Critics*. New York: New York UP, 1984.

---. *Democracy's Discontent*. Cambridge: Harvard UP, 1996.

## Standards for Morality

by Brian Fletcher

### Introduction: Morality and Lincoln-Douglas Debate

Moral philosophy is the attempt to define principles of right and wrong action, so it isn't surprising that morality is one of the most commonly used values in Lincoln Douglas Debate. However, just as morality is broad enough to be relevant to many different resolutions, it is also vague and ill defined. If you begin your speech by saying, "My value premise is morality," you need to do a lot of explaining before the judge and your opponent will know what you mean: depending on which philosopher you consult, moral rules can be sharply different or even directly contradictory.

These complexities make morality a difficult value to understand and use effectively, but that doesn't mean that you can afford to ignore it. As you probably know already, many of your opponents will use morality as a value—if not explicitly, then indirectly. Utilitarianism, treating people as ends rather than means, benevolence, welfare, happiness and many other values and criteria are actually moral principles. Sometimes it will be impossible to avoid incorporating morality into your arguments—especially when it is the standard of evaluation within the resolution (e.g., "Resolved: The possession of nuclear weapons is immoral.") The nuclear weapons topic is just one of many resolutions based on a fundamental moral question, and in order to argue any of them well a good understanding of moral philosophy is essential.

The keys to successfully incorporating morality into an LD round are a foundation of knowledge about basic moral concepts and philosophers and also a well defined and specific conception of morality as it applies to a given topic. In other words, you have to be knowledgeable enough to anticipate and refute your opponents' positions and you must also be able to explain and defend your own version of morality.

By necessity, this chapter is only a brief outline of the major moral theories. Important works in moral philosophy are often hundreds of pages long and there are too many thinkers and ideas for me to cover them all here. The primary function of this chapter is to familiarize you with basic moral terms and arguments and point you in the direction of further reading. If you're in the process of researching a specific topic, the outlines in this chapter should lead you to relevant authors and ideas. If you're doing general background reading, a good place to start is a textbook in moral philosophy or ethics (generally, the two terms can be used interchangeably). I would suggest Shelly Kagan's *Normative Ethics*, which was very helpful to me as I wrote this chapter. *Reasons and Persons* by Derek Parfit is also an excellent overview of moral theories even though it is not a textbook (Parfit advocates his own positions while Kagan lays out the debates without taking sides).

This chapter begins with a brief section on the style of moral arguments and then covers the two major schools of moral thought, consequentialism (or teleology) and deontology.

### A Word on Methods of Moral Argumentation

Although almost everyone believes that there are moral truths (there is little dispute, for example, that a sadist who inflicts suffering on other people solely for his own pleasure acts immorally), proving a moral truth isn't like proving a scientific fact. Empirical data may help us reach moral judgments—for example, many people believe that to judge whether or not an action is moral we have to know its consequences—but facts and statistics can't help us decide between conflicting foundational principles of morality. Consider this moral dispute: I claim that happiness is the only intrinsic good and so moral actions are those that maximize happiness. You claim that because each person has an inherent dignity they must all be treated as ends in themselves and not sacrificed even for the greater happiness of others. We can argue

back and forth about which of our theories is more appealing, but neither of us is going to be able to definitively “prove” our position in the same way that scientists can prove and test theories about the physical world.

So how do we go about establishing (or at least getting closer to) moral truths? Broadly speaking, there are two types of argument. The first type (bottom up arguments) evaluate moral principles according to their ability to “fit” with our intuitions. The second type (top down arguments) begin with foundational principles and then derive specific judgments from them. If we accept the foundational principles, then we must also accept the conclusions. Two quick examples to clarify: a top-down argument for utilitarianism might claim that happiness is the only intrinsic good and that therefore maximizing happiness must be a moral obligation. A bottom-up argument would point out that many of our intuitive judgments about morality—that we have a duty to give to charity or help others, for example, are supported by utilitarianism as well. These very rough sketches, but you get the idea. As we will see, some philosophers believe that we should give little or no weight to our intuitive judgments, but most people consider a moral theory’s “fit” with our conventional judgments to be an important—and if you can force your opponent to admit that her version of morality entails some judgments that most people would strongly disagree with, you have done a great deal to discredit her position.

### *Classifying Actions*

A moral theory will generally place every action in one of four categories. Some actions are prohibited or immoral; others are morally obligatory and still others may be neither required nor prohibited but morally neutral—for example, under most moral your decision to eat corn flakes rather than oatmeal this morning did not have moral significance. Finally, an action may be morally praiseworthy but not obligatory.

Note that a moral theory does not have to include all of these categories. For a utilitarian (see below), in any circumstance the action that will have the best consequences is morally required and all others are prohibited. The only time that a choice is morally neutral is when there is more than one action available to an agent that will have equally good consequences.

With these preliminary matters out of the way, we can turn to the most common moral philosophies.

### **Utilitarianism**

Utilitarianism is the best known example of a consequentialist (or teleological) theory. Consequentialism holds that the morality of any action depends solely on its consequences, and that moral agents are obligated to take those actions that will produce the best consequences overall. Utilitarianism is a form of consequentialism which argues that the best consequences are those which maximize overall happiness. Jeremy Bentham, whose ideas influenced many later utilitarians, defined his view this way:

Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*. New York: Clarendon, 1907, page 2.

“By the principle of utility it is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question.”

Utilitarians typically defend their assumption that happiness is the best way to evaluate consequences by noting that happiness is an intrinsic good. Human beings, utilitarians argue, don’t seek money (or power, or leisure, or friendship—or any other good) for its own sake, but as a means to happiness. Because all people seek to maximize happiness, we can infer that happiness is the ultimate good and the standard that we should use to evaluate the consequences of our actions. John Stuart Mill, one of the most famous

advocates of utilitarianism, argued that such an inference from actual desires was the only way to determine what the good is:

John Stuart Mill, *Utilitarianism*. New York: Liberal Arts Press, 1953, page 38.  
 “The only proof that a sound is audible is that people hear it; and so of the other sources of our experience. In like manner, I apprehend, so the sole evidence it is possible to produce that anything is desirable is that people actually do desire it . . . No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness. This, however, being a fact, we have not only all the proof which the case admits of, but all which it is possible to require, that happiness is a good; that each person’s happiness is a good to that person, and the general happiness, therefore, is a good to the aggregate of all persons.”

Thus far I have used the terms “overall happiness” and “general happiness” without careful explanations. It is important to note that for a utilitarian, the happiness of every person is included, and each person’s happiness counts equally. As we will see when we examine objections to the utilitarian view, the inclusion of all people’s interests weighed equally has some surprising effects on the obligations created by utilitarianism.

### *Evolving Standards for Utilitarianism*

Utilitarians agree that morality requires us to maximize individual happiness or satisfaction, but there are number of different ways to measure happiness. Bentham was a believer in hedonism, the view that a person’s welfare is determined solely by the presence of pleasure and the absence of pain. He argued that it was possible to make almost mathematical calculations, adding up pleasures on one side and subtracting pains on the other. He even made a list of all the factors (duration, intensity, etc.) that needed to be considered in order to determine the value of a pleasure or pain. On Bentham’s view, in order to determine what morality requires in any circumstance, one must simply determine which people will be affected by a decision and then sum up the pains and pleasures that each option would produce for each of them. Morality requires that the agent take that action which maximizes pleasure—or, since pain and pleasure cancel out in Bentham’s accounting, that action which minimizes pain.

Bentham also believed that the value of a pleasure was entirely independent of its source—so, for example, if watching T.V. all day gives me as much pleasure as writing a novel gives you, Bentham would regard our activities as equally valuable. Bentham made the same point in the language of his times when he wrote that “pleasure for pleasure, pushpin [a child’s game] is as good as poetry.”

One of Bentham’s followers, John Stuart Mill, advanced his own version of utilitarianism. Mill’s father was one of Bentham’s most fervent supporters, and from a very early age Mill was raised as a utilitarian—so it is not surprising that Mill’s definition of utilitarianism is very similar to Bentham’s:

John Stuart Mill, *Utilitarianism*. New York: Liberal Arts Press, 1953, page 7.  
 “The creed which accepts as the foundation of morals “utility” or the “greatest happiness principle” holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure.”

Mill was a hedonist because he, like Bentham, believed that pleasure and pain were the sole sources of individual happiness or well being. However, unlike Bentham, who believed that all pleasures were equal, Mill argued that some pleasures were more valuable than others. Specifically, the “higher” pleasures (for example, those derived from the arts, love and philosophical contemplation) should count for more than equivalent amounts of pleasure from “lower” sources—like the physical pleasure from eating. Mill made an appealing case for his version of utilitarianism by pointing out that we would much rather have a life of a few higher pleasures than one with all imaginable low pleasures but none of the higher ones:

John Stuart Mill, *Utilitarianism*. New York: Liberal Arts Press, 1953, page 10.

“It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.”

For obvious reasons, Mill’s version of hedonism is often called qualitative hedonism and Bentham’s quantitative hedonism. There are also some utilitarians who have given up on hedonism entirely, arguing that there are aspects of individual happiness or well being other than pleasure. For example, we might believe that knowledge (or love, or friendship, etc.) is valuable in and of itself, independent of the pleasure that it produces. Or we might believe that there are some experiences which contribute to a valuable life but are not pleasurable at all—for example, occasional failures might make a person more well-rounded and mature, but failing is certainly never pleasant. Whatever specific list of experiences and feelings we choose, if we go down this road we commit ourselves to a view of individual well being that is based on mental states.

At first, this view seems highly plausible. After all, we tend to evaluate our own well being in terms of how we feel, and so it makes sense to measure everyone’s well-being according to whether or not they have desirable mental states. However, there is also a serious objection to mental-state theories of well being: mental states can be based on misinformation or deception. Consider a businessman who lives his whole life thinking that he is successful and well liked, when in reality his business is a failure, his friends hate him and his wife is cheating on him. Certainly we do not want to say that he has led a good life, but he has had nothing but desirable mental states. An even more graphic example is what Robert Nozick calls the experience machine (*Anarchy, State and Utopia*, 42-45). Suppose there was a machine that would perfectly simulate any life you wanted. In reality your body would be floating in a tank in a scientist’s lab, but your mind would think that you were living the life of an astronaut or an NBA superstar, or whatever you think the perfect life would be. Most people wouldn’t call life in the experience machine good or desirable (would you want to plug in if given the chance?) but a mental state theory of well-being must conclude that a life in the experience machine is just about the best life possible, since it can include all sorts of desirable mental states.

Those who find this criticism of mental state versions of well being persuasive are often tempted by what I will call preference utilitarianism. On this view, we should measure a person’s well being by whether or not their desires are actually fulfilled. A preference theory gives the “right” answers to the cases of the businessman and the experience machine—in each case, although the person believes that their desires are being fulfilled, in reality they are not and so according to a desire-fulfillment theory of well-being their lives are not going well, which is exactly the assessment that most of us make intuitively. Peter Singer explains this “preference” utilitarianism:

Peter Singer, *Practical Ethics* (2<sup>nd</sup> Edition). New York: Cambridge University Press, 1993, page 94.

“This other version of utilitarianism judges actions, not by their tendency to maximize pleasure or minimize pain, but by the extent to which they accord with the preferences of any beings affected by the action or its consequences. This version of utilitarianism is known as ‘preference utilitarianism.’ It is preference utilitarianism, rather than classical utilitarianism, that we reach by universalizing our interests . . . if we make the plausible move of taking a person’s interests to be what, on balance and after reflection on all the relevant facts, a person prefers.”

This version of utilitarianism can lead to some surprising conclusions. In *Practical Ethics*, Singer uses his version of preference utilitarianism to argue that human life is not necessarily sacred, that our current treatment of animals is morally abhorrent and that the developed world should drastically revise its refugee and foreign aid programs. He also shows that most of the same conclusions follow from nearly any of the versions of utilitarianism that we have considered thus far. Given these controversial conclusions, it isn’t surprising that there are a variety of objections to utilitarianism, which we will now examine.

### *Objections to Utilitarianism*

Objection #1: Utilitarianism allows the sacrifice of the few to promote the happiness of the many. There are a variety of examples used to illustrate this point: the doctor who can only save five patients by killing one and transplanting his organs, the judge who knows that he can only prevent a riot that would result in many deaths by sending an innocent man to jail, etc. In these and many similar cases, it seems that utilitarianism permits, even requires, us to do harm to innocent people in order to prevent greater harms to other people. It is clear that saving five lives is a better outcome than saving only one, no matter what standard of well being we use. But most people are disturbed by the idea of doing harm to innocent people, and for some this aspect of utilitarianism is enough for them to reject it outright.

Utilitarians have a number of potential responses to this objection. The simplest is to accept that harming innocent people is (very rarely, and only in extraordinary circumstances) sometimes the morally correct thing to do. If our intuitions tell us otherwise, then we should fault our intuitions, not utilitarianism. After all, if we could trust our intuitions all of the time, then there would be no need to search for moral principles. Utilitarians can also point to the various biases that can affect our unconsidered moral judgments. J.J.C Smart is a utilitarian who takes this approach:

J.J.C. Smart, “An Outline of a System of Utilitarian Ethics,” in J.J.C. Smart and Bernard Williams, eds., *Utilitarianism: For and Against*. New York: Cambridge University Press, 1973, page 56.

“The fact that [utilitarianism] has consequences which differ with some of our particular moral judgments need not be decisive against it. In science general principles must be tested by reference to particular facts of observation. In ethics we may well take the opposite attitude, and test our particular moral attitudes by reference to more general ones. The utilitarian can contend that since his principle rests on something so simple and natural as generalized benevolence it is more securely founded than our particular feelings, which may be subtly distorted by analogies with similar looking (but in reality totally different) types of case, and by all sorts of hangovers from traditional and uncritical ethical thinking.”

Finally, the utilitarian making this response can argue that many moral judgments which used to be almost universally accepted have since been rejected (consider slavery, the role of women and minorities, etc.). These past shifts in our moral judgments should teach us to be open to further modifications.

The second response available to utilitarians is to dispute the claim that utilitarianism obligates the doctor to kill the one patient in order to save the five (or the judge to frame the innocent man, etc.). This is generally done by pointing out the secondary consequences of the act in question—for example, a utilitarian could argue that if doctors began killing innocent and otherwise healthy patients in order to save others, people would suffer a great deal of anxiety whenever they went to the hospital and might even refuse to get medical treatment at all. There would also be harms to the innocent man's family, friends, etc. However, this type of response is not generally compelling because it is always possible to modify the example and box the utilitarian into a corner. For example, suppose that the innocent patient has no family and the doctor knows he will be able to conceal his actions from the public, so there will be no secondary consequences. In this case, it seems like the utilitarian is forced to accept that in some cases, utilitarianism will require us to inflict harm on innocent people.

The third response that is available to utilitarians is to adopt what is known as rule-utilitarianism instead of act-utilitarianism. Thus far we have defined utilitarianism as the doctrine which requires us to perform whatever act would have the best consequences in any given case. This is act-utilitarianism. Rule-utilitarianism, by contrast, applies utilitarian calculations only to formulate general rules of conduct not to judge specific actions. For example, in general society will be best off if it adopts a rule prohibiting the killing of innocent people. The rule is justified because it maximizes the overall good, but in specific cases the moral action is not determined by a utility-calculation for that case, but rather by obedience to the rules.

The appeal of rule utilitarianism seems clear—many of the cases where utilitarianism yields questionable results are clearly exceptions to general rules that are perfectly acceptable. In fact, a plausible case can be made that most of what we call individual rights are really just utility maximizing rules.

Rule utilitarianism therefore seems to be a nice way to get all of the advantages of utilitarianism with none of its objectionable features. However, utilitarians and non-utilitarians alike question the validity of rule utilitarianism. If we accept that maximizing utility (however we choose to define it) is the source of moral good, then why perform an act which we know will not maximize utility just because in many other similar cases that action would maximize utility? Moreover, if the rules that we are to choose are going to maximize utility, they should simply be revised whenever we find a case where breaking the rules would maximize utility. J.J.C. Smart explains:

J.J.C. Smart, . "An Outline of a System of Utilitarian Ethics," in J.J.C. Smart and Bernard Williams, eds., *Utilitarianism: For and Against*. New York: Cambridge University Press, 1973, page 10.

"The rule utilitarian presumably advocates his principle because he is ultimately concerned with human happiness: why then should he advocate abiding by a rule when he knows that it will not in the present case be most beneficial to abide by it? The reply that in most cases it is beneficial to abide by the rule seems irrelevant. And so is the reply that it would be better that everybody should abide by the rule than that nobody should. This is to suppose that the only alternative to "everybody does A" is "no one does A." But clearly we have the possibility "some people do A and some don't." Hence to refuse to break a generally beneficial rule in those cases in which it is not most beneficial to obey it seems irrational and to be a case of rule worship."



Objection #2: Utilitarianism is too demanding. This objection begins by noting that utilitarianism counts each person's utility equally in determining the overall good. That seems only fair and perfectly intuitive, but it has some very counterintuitive results. For example, as Peter Singer demonstrated in his article, "Famine, Affluence and Morality," there are people all over the world dying from lack of food, shelter and medical care whose deaths could be prevented at a cost of just a few dollars each. Surely those dollars would provide the starving with more utility than they do when people like you and me spend them on movies (or debate evidence books, or nice clothes, etc). However, this means that utilitarianism obligates us (and every other even moderately affluent person) to give money to save the starving until giving any more would do more harm to us than good for them—that is, we have a moral obligation to reduce ourselves to very near the level of the refugees.

Our obligations under utilitarianism extend even further than saving the starving. Every time we make a decision we are required to take the action that would produce the most good overall. In practical terms this will generally mean giving our resources and time to those who need it most, and we act immorally if we favor our friends, relatives or even ourselves. Critics of utilitarianism have objected that requiring a person to spend all of their time maximizing the overall good, leaving no time for her to live her own life. Specifically, they have charged that utilitarianism is too demanding because a), the financial and material costs it imposes are too high; b), it strips people of their autonomy (their ability to plan and live their own life); and c), it robs people of their integrity by alienating them from their personal projects, beliefs and values. Bernard Williams makes the objection from integrity:

Bernard Williams, "A Critique of Utilitarianism," in J.J.C. Smart and Bernard Williams, eds., *Utilitarianism: For and Against*. New York: Cambridge University Press, 1973, page 116-117.

"How can a man, as a utilitarian agent, come to regard as one satisfaction among others, and a dispensable one, a project or attitude round which he has build his life, just because someone else's projects have so structured the causal scene that that is how the utilitarian sum comes out? It is absurd to demand of such a man, when the sums come in from the utility network which the projects of others have in part determined, that he should just step aside from his own project and decision and acknowledge the decision which the utilitarian calculation requires. It is to alienate him in a real sense from his actions and the source of his actions in his own convictions. It is to make him into a channel between the input of everyone else's projects, including his own, and an output of optimific decision; but this is to neglect the extent to which *his* actions and *his* decisions have to be seen as the actions and decisions which flow from the projects and attitudes with which he is most closely identified. It is thus, in the most literal sense, an attack on his integrity."

Susan Wolf makes a similar objection in her essay, "Moral Saints." Wolf argues that almost any version of morality, carried to an extreme by an individual agent, will result in an empty and unappealing life for that agent. This criticism is particularly applicable to utilitarianism, which makes such sacrifices obligatory, but Wolf's arguments also apply to any version of morality that deems sacrifices for the sake of others morally praiseworthy. Wolf concludes that the answer is not necessarily to revise our conception of morality, but rather to re-assess the place we give morality in relation to other values and allow it to be trumped by other considerations on occasion:

Susan Wolf, "Moral Saints," *The Journal of Philosophy*, Vol. 79:8 (August, 1982), page 438.

"The role morality plays in the development of our characters and the shape of our practical deliberations need be neither that of a universal medium into which all other values must be translated nor that of an ever-present filter through which all other values must pass. This is not to say that moral values should not be an important, even the most important, kind of value we attend to in evaluating and improving ourselves and our world. It is to say that our values cannot be fully comprehended on the model of a hierarchical system with morality at the top."

Objection #3: Act-utilitarianism is impossible. One of the first things that people notice about act-utilitarianism is that it requires moral agents to do a lot of calculating. After all, if we evaluated all of the consequences of every possible action in every situation, we would be paralyzed—constantly thinking and unable to act. Furthermore, any action has long-term consequences in the future which are impossible to know or even predict—so even if we had forever to decide what to do, we still wouldn't have enough information to make the decision.

The utilitarian can make a number of responses to this argument. First, act-utilitarianism requires people to take the action with the best consequences. It is fairly obvious that sitting around thinking about what to do all the time won't have the best possible consequences, so act-utilitarianism must obligate people to stop thinking after a reasonable amount of time and do something. Second, it is important to note that for a utilitarian, there is a distinction between actions that are wrong and those that are blameworthy. An action is wrong if it does not have the best possible consequences of all of the acts available to the agent, but it is only blameworthy if the agent knew that at the time and did it anyway. The classic example is the hypothetical man who rescues a drowning child who then grows up to be Hitler. Things would have been much better if he had not made the rescue, and so his action was wrong, but we certainly wouldn't call it blameworthy.

This is also a good place to dispel another myth—the belief that in a utilitarian society everyone would have to constantly run around thinking about maximizing utility. In reality, it will often be more efficient to create other motives for people to act and even to teach simple moral rules (like do not kill innocent people, ever) than to ask everyone to calculate the utility of their individual acts all of the time. A society that set its moral norms in rules like this would probably function much better than one where everyone tried to guess at which action would maximize utility in every given case. This is not the same as rule-utilitarianism—an act utilitarian can recognize that sometimes it is more efficient to function with rules, though if the right circumstances arise she will continue to believe that sometimes the only moral act is to break the rules. Henry Sidgwick explains the intricacies of motivation in a utilitarian society:

Henry Sidgwick, *The Methods of Ethics*. London: MacMillan, 1930, page 413.

"The doctrine that Universal Happiness is the ultimate *standard* must not be understood to imply that Universal Benevolence is . . . always the best *motive* of action. It is not necessary that the end which gives the criterion of rightness should always be the end at which we consciously aim: and if experience shows that the general happiness will be more satisfactorily attained if men frequently act from other motives than pure universal philanthropy, it is obvious that these other motives are to be preferred on Utilitarian principles."

Objection #4: Utilitarianism rewards the wrong people. This is actually a set of two related criticisms first made by John Rawls. Whatever version of utilitarianism we adopt, we must count the preferences, mental states or pleasures of all people equally. However, this means rewarding some people simply because they happen to have expensive tastes. Suppose I have developed a taste for caviar and fine wine and cannot be happy without getting them on a daily basis. You, on the other hand, are happy with a simple diet of bread and water. A utilitarian must value our pleasures (or preferences, etc.) equally, and so a utilitarian distribution of resources will give me much more than it gives you so that I can fulfill my expensive tastes. A second, related objection has to do with people who have evil or sadistic desires. If a person gets pleasure in seeing others suffer, or in discriminating or otherwise causing harm, then that pleasure goes into the utilitarian calculus along with everyone else's. It is possible to imagine a situation where a large majority gets such pleasure from hurting a minority that it actually outweighs the pain caused to the minority.

A utilitarian could respond to these objections by modifying her theory to exclude some pleasures and preferences, or by adopting something like Mill's qualitative utilitarianism, which would undoubtedly regard pleasures derived from hurting other people as "lower order" pleasures. Alternatively, the utilitarian could maintain, as with the first objection, that these circumstances are simply unlikely to ever actually occur.

There are other objections to utilitarianism, and the responses to these objections are more in depth than what I've been able to include, but these are the most important issues. Before moving on to the other half of the moral universe, deontology, I should note that we have not exhausted consequentialist or teleological theories with our study of utilitarianism. Recall that a moral doctrine is consequentialist whenever it holds that people are obligated to take whatever action best promotes the good. Different versions of consequentialism are distinguished by their different conceptions of what makes consequences good. We have focused on a family of theories that focus on different definitions of individual happiness or well being, but there are an infinite number of other possible versions of consequentialism. For example, we could argue that the fairness of the distribution of well being was important and create a sort of egalitarian consequentialism.

## Deontology

Deontology is the term used to cover a broad family of theories whose chief similarity is that they are not consequentialist. Deontologists often do believe that consequences are morally significant, but they also believe that there are times when the morally correct act is not the one that produces the best consequences. The moral rules advocated by deontologists typically differ from consequentialist prescriptions in one or both of the following ways: first, a deontologist can argue for a constraint against doing harm. That is, she can claim that it is immoral to harm an innocent person, even if that is the only way to maximize the overall good. Second, a deontologist can argue for options not to promote the good. As we saw above, consequentialism obliges every moral agent to always take the action that maximizes overall good. An option is a moral permission to favor one's own interests—so, for example, a deontologist who believes in options might recognize that donating all of your income to relieve famine in the developing world is morally praiseworthy but still believe that doing so was not morally obligatory. Most deontological theories include both constraints against doing harm and options not to promote the good, but it is possible to formulate a theory with one but not the other. Samuel Scheffler, for example, argues for a version of morality that includes options but not constraints. That is, he believes that individuals can choose not to promote the good if doing so was too large a sacrifice of their own interests, but he argues that it is permissible to harm an innocent person if that is the only way to promote the good. Although I don't know of any prominent examples, it would also be possible to formulate a theory with constraints but no options.

## The Constraint Against Doing Harm

At first, the constraint against doing harm seems to fit neatly with our intuitive beliefs about morality. However, before we accept it we need to define what we mean a little more clearly. First, we have to decide whether we will want a moderate or an absolute constraint against doing harm. The difference is this: while all deontologists would agree that it is not permissible to kill one person in order to save two, what if the only way to save 1 million people was to kill one innocent person? 1 billion? What if the only way to save all of humanity was to take an innocent life? In these extreme cases some deontologists might want to argue that the constraint doesn't apply. These moderate deontologists believe that the constraint has a threshold: if the amount of good that can be done by harming an innocent person is truly enormous, then the constraint does not apply. On the other hand, absolute deontologists believe that each individual is inviolable and cannot be harmed no matter how great the amount of good to be done.

A robust constraint against doing harm will also have to deal with other issues. Most of them are unlikely to matter in an LD round, so I will just sketch them briefly. First, does the consent of the victim lift the constraint on doing harm? What if the harm is necessary in order to provide the victim with a greater benefit (think of surgery)? In that case, what if the potential patient refuses to give his consent to an operation even if it is the only way to save her own life? What if the patient is unable to give her consent (suppose she is unconscious)? If consent is required to lift the constraint, what conditions make it valid? Does the victim have to be fully informed? Fully rational?

Another set of issues has to do with risks. It is fairly clear that we want our constraint to cover the imposition of risks on other people as well as harms (suppose I have one bullet in a revolver and I spin the barrel and then pull the trigger with the gun pointed at you. Even if the gun doesn't fire, most people still think that what I did was wrong). However, when I drive down the street every day I impose people to a low-level risk of dying or serious injury, so we don't want to prohibit all imposition of risk. A plausible constraint will probably have to consider both the size of the harm that is risked and the probability that it will occur, as well as the necessity of imposing it (we might be OK with me imposing a .0001% chance of injury on you by driving a car down your street, but not OK with me imposing the same risk deliberately and for no purpose other than my own entertainment).

## Options

The deontologist will also have to define exactly what kind of options she wants to defend. Some people go so far as to say that individuals have no positive obligations to promote the good at all—that as long as we don't actively harm anyone ourselves, we are acting morally. Most people, though, reject this extreme position. Shelly Kagan and Peter Singer give the example of a small child drowning in a shallow pond. If there really are no positive duties to promote the good, then it would be perfectly moral for me to walk by and let the child drown, but most of us find that conduct to be abhorrent—which means that most of us recognize some moral duties to promote the good. The question is, how far do they extend? For the consequentialist, the answer is simple: they never stop, because individuals are always obligated to take the action which best promotes the good. The deontologist, on the other hand, must find some point in between the two extremes.

This is not easy to do. Any point that the deontologist picks is in danger of appearing arbitrary—it would be very hard to give principled reasons why I am obligated to give \$500 to famine relief but not \$505 when the extra \$5 does no more harm to me than the second-to-last \$5 and results in a life being saved.

This is a larger problem than it initially appears. Thus far we have been formulating and revising deontological principles in an effort to get them to match up to our intuitions (that is, making bottom-up arguments) but we don't have any principled, top-down reasons for why the principles which we are creating are correct. Therefore, we should examine some different attempts to provide a foundation for deontological principles.

### *Kant*

Immanuel Kant was a brilliant and influential philosopher, but his works can be a minefield for a Lincoln Douglas Debater. First, they are very densely written and can be confusing (even experts disagree on exactly what he meant). Second, though, Kant was a prolific writer who had a lot to say about many moral issues. The basics of his philosophy are contained in a relatively short work, *Foundations of the Metaphysics of Morals* (sometimes translated as *Groundwork of the Metaphysics of Morals*), but he wrote extensively on the application of his philosophy elsewhere. As a result, more than one debater has run into problems by interpreting Kant to mean one thing only to have their opponent produce a quote from him saying exactly the opposite! For these reasons I would recommend that you familiarize yourself with Kant and his ideas because of the influence they had on others and because your opponents may use him, but I would stay away from using him to define your own position unless you are very well read and have a thorough understanding of his thinking.

That warning aside, what follows is a brief outline of the major principles of Kantian ethics. The core of Kant's philosophy was what he called the categorical imperative. Kant used the term "imperative" to mean obligation or duty, and he distinguished between hypothetical imperatives and categorical imperatives. A hypothetical imperative has force only given some other desire. For example, if you want to win debate rounds, you should know a little bit about Kant. The imperative, "you should know a little bit about Kant," depends on your desire to win rounds—it is not a universal obligation. A categorical imperative, by contrast, is valid regardless of your particular desires or circumstances:

Immanuel Kant, "Foundations of the Metaphysics of Morals," in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949, page 73.

"All imperatives command either hypothetically or categorically. The former present the practical necessity of a possible action as a means to achieving something else which one desires (or may possibly desire). The categorical imperative would be one which presented an action as of itself objectively necessary, without regard to any other end."

According to Kant, we cannot discover the content of the categorical imperative through empirical investigation, but only by reasoning alone. Kant argues that the one categorical imperative can be stated in three different but equivalent formulas, which he explained with the use of four examples.

His first formulation is the most famous:

Immanuel Kant, “Foundations of the Metaphysics of Morals,” in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949, page 80.

“There is, therefore, only one categorical imperative. It is: Act only according to that maxim by which you can at the same time will that it should become a universal law.”

For Kant, it is impossible to will that the maxim of your action could become a universal law if it would, as a universal law, contradict a law of nature, be self-contradictory or go against the nature of moral agents as rational beings. He gives four examples. First, consider suicide. Kant argues that it is impossible to will that suicide become a universal law because it is taking one’s life out of self love, which is intended by nature to promote and preserve life. Second, falsely promising to pay back a loan in order to get desperately needed money. But in this case, to will breaking promises when it was useful as a universal law renders the very notion of a promise meaningless. If breaking promises were a universal law, the statement “I promise. . .” would be incoherent. Third, consider an individual who could develop a talent and lead a productive life or choose to remain idle. Kant argued that to will idleness as a universal law contradicts the nature of the self as a rational being, because “as a rational being, he necessarily wills that all his faculties should be developed, inasmuch as they are given to him for all sorts of possible purposes.” Finally, consider a failure to help others when one has the means to do so. This maxim, if a universal law, would be self-contradictory because the person who refused help to others now would expect others to help him if the situation were reversed.

Kant’s second formulation of the categorical imperative is also famous, and is probably the version most commonly used in LD:

Immanuel Kant, “Foundations of the Metaphysics of Morals,” in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949, page 86-87.

“Every rational being exists as an end in himself and not merely as a means to be arbitrarily used by this or that will. In all his actions, whether they are directed to himself or to other rational beings, he must always be regarded at the same time as an end. . . . Such beings are not merely subjective ends whose existence as a result of our action has a worth for us but are objective ends, i.e., beings whose existence in itself is an end. Such an end is one for which no other end can be substituted, to which these beings should serve merely as means. For, without them, nothing of absolute worth could be found, and if all worth is conditional and thus contingent, no supreme practical principle for reason could be found anywhere.”

Kant applies this version of the categorical imperative to the four examples above, reaching the same conclusion in each case. However, the way he reaches that conclusion in the last case illustrates a point about the categorical imperative that is often overlooked. Specifically, he argues that the duty not to use a person as a means to an end is more than just an injunction against doing harm, but actually requires moral agents to take positive steps to promote the ends of others:

Immanuel Kant, "Foundations of the Metaphysics of Morals," in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949, page 88.

"Humanity might indeed exist if no one contributed to the happiness of others, provided he did not intentionally detract from it; but this harmony with humanity as an end in itself is only negative rather than positive if everyone does not also endeavor, so far as he can, to further the ends of others. For the ends of any person, who is an end in himself, must as far as possible also be my end, if that conception of an end in itself is to have its full effect on me."

Kant's third formulation of the categorical imperative is less well known and more confusing. Essentially, Kant argues that each individual moral agent must be guided by the dictates of the universal maxims that he or she formulates as an autonomous, self-legislating being in a "kingdom of ends":

Immanuel Kant, "Foundations of the Metaphysics of Morals," in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949, page 89.

"Objectively, the ground of all practical legislation lies (according to the first principle) in the rule and in the form of universality, which makes it capable of being a law (at most a natural law); subjectively, it lies in the end. But the subject of all ends is every rational being as an end in itself (by the second principle); from this there follows the third practical principle of the will as the supreme condition of its harmony with practical reason, viz., the idea of the will of every rational being as making universal law. By this principle all maxims are rejected which are not consistent with the universal lawgiving of will."

Kant explicitly states that all three of these formulations are equivalent, though many of his critics have tried to argue that they often yield differing results:

Immanuel Kant, "Foundations of the Metaphysics of Morals," in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949, page 91.

"The three aforementioned ways of presenting the principle of morality are fundamentally only so many formulas of the very same law, and each of them unites the others in itself."

## Contractualism

Another foundational version of deontology is known as contractualism. On this view, what makes a moral principle valid is the fact that reasonable people would agree to it. This seems like a plausible start, but there are different versions of contractualism that are based on different types of agreement. For example, some people believe that the right way to think about morality is to consider the rules that would be agreed to by a set of idealized bargainers operating in ignorance of their particular circumstances. This is very similar to Rawls' original position, except that these parties are deriving moral norms rather than principles of distributive justice. On another view, what matters is what the people who are actually affected can reasonably do. T.M. Scanlon is the most noted proponent of this view and he defines a contractualist ethics based on what people could not reasonably reject:

T.M. Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond*. New York: Cambridge University Press, 1982, page 110.

"An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis for informed, unforced general agreement."

Of course, Scanlon's argument is incomplete without a definition of what it means to "reasonably reject" an act (as opposed to "unreasonably rejecting" it). There are many circumstances where every choice available will make someone worse off, or at the very least not as well off as they could otherwise be. Can any such person "reasonably reject" an action? If not, what guidelines should be used to determine when a rejection is and is not reasonable? And once we generate such guidelines, aren't they really the basis of morality rather than what people actually agree to? Seen this way, it might be argued that Scanlon's contractualism begs the question: it can't be a system of morality because it presumes the existence of a system of morality which defines what is and is not reasonable.

However, though we might find flaws with Scanlon's particular version of contractualism, there is something appealing about agreement or consent as the basis of morality:

T.M. Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond*. New York: Cambridge University Press, 1982, page 128.

"It is sometimes said that morality is a device for mutual protection. According to contractualism, this view is partly true but in an important way incomplete . . . The desire for protection is an important factor determining the content of morality because it determines what can reasonably be agreed to. But the idea of general agreement does not arise as a means of securing protection. It is, in a more fundamental sense, what morality is about."

### Other Foundations for Deontology

There are surprisingly few other attempts to define a principled basis for deontology. Most of them share in common the belief that there is something inherently valuable about each individual that makes it wrong to sacrifice one person for the greater good. This is essentially Kant's second formulation of the categorical imperative without all of the Kantian baggage. Specifically, we might refer to the dignity, the autonomy, the individuality or the sanctity of life possessed by each individual and argue that it is wrong to sacrifice that value for others because it demeans all human dignity (or autonomy, etc.).

These attempts definitely seem to capture some of our moral intuitions, but in constructing a deontological theory it is important to focus on the wrongness of using a person as a means to some other end. If we focus only on the value of dignity, or autonomy, we may not be able to justify a constraint against doing harm. To return to the case of the doctor, it may well be true that by killing the one to save the five the doctor strips him of his autonomy—but isn't it also the case that if the doctor allowed the five to die, they would all lose their autonomy as well? A truly plausible deontological constraint must not just differ from utilitarianism by substituting dignity or some other value for happiness, but must actually provide a reason why it is wrong to harm one person for the greater overall good, however that good might be defined.



## Conclusion

Hopefully this chapter has helped to acquaint you with some new ideas about morality. Unfortunately you have probably finished with more questions than you had when you started, but like any complicated philosophical issue, morality is like that. The further you get into the subject, the more issues you become aware of and the more questions you have. There are no final answers in moral philosophy, no “right” philosopher or theory. However, that isn’t to say that further research into moral philosophy won’t help: you win debates about morality when you have considered the issue one level deeper than your opponent, when you are one objection and response ahead of him. I hope that this chapter (and the rest of this book) will help you get there.

## References

- Aristotle. *The Nicomachean Ethics*, trans. H. Rackham. New York: Putnam, 1926.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. New York: Clarendon, 1907.
- Fletcher, Joseph. *Situation Ethics*. Philadelphia: Westminster, 1966.
- Heyd, David. *Supererogation*. New York: Cambridge University Press, 1982.
- Kagan, Shelly. *Normative Ethics*. Boulder: Westview, 1998.
- Kagan, Shelly. *The Limits of Morality*. New York: Oxford University Press, 1991.
- Kant, Immanuel. “Foundations of the Metaphysics of Morals,” in *Critique of Practical Reason and Other Writings in Moral Philosophy*, trans. Lewis White Beck. Chicago: University of Chicago Press, 1949.
- Mill, John Stuart. *Utilitarianism*. New York: Liberal Arts Press, 1953.
- Nagel, Thomas. *Moral Questions*. New York: Cambridge University Press, 1979.
- Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books, 1974.
- Parfit, Derek. *Reasons and Persons*. New York: Oxford University Press, 1984.
- Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.
- Scanlon, T.M. “Contractualism and Utilitarianism,” in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond*. New York: Cambridge University Press, 1982.
- Scheffler, Samuel. *The Rejection of Consequentialism*. New York: Oxford University Press, 1982.
- Scheffler, Samuel (ed.). *Consequentialism and Its Critics*. New York: Oxford University Press, 1988.
- Sidgwick, Henry. *The Methods of Ethics*. London: MacMillan, 1930.
- Singer, Peter. *Practical Ethics* (2<sup>nd</sup> Edition). New York: Cambridge University Press, 1993.

Singer, Peter. "Famine, Affluence and Morality," *Philosophy and Public Affairs*. Vol. 1:2 (1972), pp. 229-243.

Slote, Michael. *Commonsense Morality and Consequentialism*. New York: Routledge and Keegan Paul, 1985.

Smart, J.J.C. "An Outline of a System of Utilitarian Ethics," in J.J.C. Smart and Bernard Williams, eds., *Utilitarianism: For and Against*. New York: Cambridge University Press, 1973.

Williams, Bernard. "A Critique of Utilitarianism," in J.J.C. Smart and Bernard Williams, eds., *Utilitarianism: For and Against*. New York: Cambridge University Press, 1973.

Wolf, Susan. "Moral Saints," *The Journal of Philosophy*. Vol. 79: 8 (August, 1982), pp. 419-439.

## Standards for Political Duty/Obligations throughout History

by Sumon Dantiki

Novice debaters have often approached me while writing their cases and asked: “What is the right criterion/argument for me to use on this topic?” The question is an interesting one because it implies that there is one criterion or argument that must be used by a certain topic. Nothing could be further from the truth. In Lincoln-Douglas debate there really is no singular criterion or argument that will guarantee victory on any given topic. Rather, rounds, especially at the highest levels of competition, are usually won by a debater’s understanding of his own arguments, value and criterion and his ability to use that understanding to his advantage during a round. Additionally, it helps immensely to be familiar with popular values/criteria for two reasons: 1) They won’t catch you off-guard in the middle of a round. 2) You can spot any factual flaws in your opponent’s interpretations or argumentation of their criteria.

I can’t stress how important these two reasons are. Novice, or inexperienced, debaters lose many of their rounds not because they haven’t prepared their own case well enough, but because a new, seemingly complex, philosophy has caught them by surprise in the middle of a round. It’s difficult to argue against something you don’t understand and your opponent might not always make his philosophy clear to you in the middle of a debate. Also, one of the most impressive things a debater can do during a round is to “turn” or “claim” his opponents value/criteria. This means that a debater effectively convinces a judge that he actually supports his opponent’s value/criteria better than his opponent does. Once again, this is difficult to do without some prior knowledge of common philosophies that are used in criteria or standards.

The purpose of this paper, then, is to survey various standards of political duty/obligation throughout history with a focus on topics that usually come up in Lincoln-Douglas debate rounds. Specifically, I’ll highlight the important relationships between individual and society, individuals within society, or different societies as given by legal codes and political agreements. It’s a vast amount of material; volumes of books have already been dedicated to each of the individual subjects I plan on covering. Instead of trying to cover everything, I’ll try to emphasize and provide the historical background of the material relevant to debate rounds. The main goal of this is to give the reader a better idea of these topics and thus help apply them when choosing a standard or criteria in future debate cases. As I mentioned before, there really isn’t one criterion or philosophy that is guaranteed to win rounds. Instead, I hope debaters will primarily use this material during case writing and also when deciding which criteria *not* to use and how to attack a criterion or argument that an opponent may use.

I’ve written the paper with the novice debater in mind, taking care that the reader need not have extensive debating experience to understand my analysis. At the same time, I tried not to water down the paper too much—veteran debaters will find this to be a great way to help focus their research on the writings and writers who really affect the case they are researching.

Let’s start at the very beginning...

**Ancient Period.** There is not much that Lincoln-Douglas debaters need to worry about from this time period in the way of political standards. Most standards that came into being during this epoch have evolved into more modern, applicable standards or simply are not applicable for debate purposes.

One notable exception, however, is the concept of *lex taleonis*, which literally means “eye for an eye.” The concept originated under the reign of King Hammurabi of ancient Babylon (1795-1750 BC) and is found throughout his famous legal code.

As Charles F. Horne notes (Avalon Project, Yale Law School) : “. . . [B]y far the most remarkable of the Hammurabi records is his code of laws, the earliest-known example of a ruler proclaiming publicly to his people an entire body of laws, arranged in orderly groups, so that all men might read and know what was required of them. . . The code then regulates in clear and definite strokes the organization of society. The judge who blunders in a law case is to be expelled from his judgeship forever, and heavily fined. The witness who testifies falsely is to be slain. Indeed, all the heavier crimes are made punishable with death. Even if a man builds a house badly, and it falls and kills the owner, the builder is to be slain. If the owner's son was killed, then the builder's son is slain. We can see where the Hebrews learned their law of "an eye for an eye." These grim retaliatory punishments take no note of excuses or explanations, but only of the fact—with one striking exception. An accused person was allowed to cast himself into "the river," the Euphrates. Apparently the art of swimming was unknown; for if the current bore him to the shore alive he was declared innocent, if he drowned he was guilty.”

As you can see, *lex talionis* was a very crude basis for a legal code; it basically equated retribution with justice to install fear, and consequently order, into Babylonian society. It is important, however, because it is one of the best early examples of an ancient legal code. Moreover, it clearly set the state as an objective arbiter of societal disputes. Not only does Hammurabi outline what is unacceptable behavior (i.e. murder) in Babylonian society, he also establishing clear punishments for these behaviors. While the punishments are considered harsh by most modern standards, they are an early manifestation of **equality** in the legal code. This concept has been an obvious cornerstone of many subsequent legal systems—the American concept of “equality in the eyes of the law” can be said to have roots in Hammurabi’s code. Secondly it is a great example of **retribution** within the legal system. Hammurabi’s ensures, in a very crude manner, that the offender suffers just as the victim did. Finally, Hammurabi’s code is important because this concept of retribution also includes **proportionality**. Once again, this has influenced consequent legal standards—“the punishment must fit the crime,” is a prime example within the American legal system.

But it’s also important to note that most societies since Babylonia have taken measures to prevent the vindictive nature (at least in the eyes of most modern scholars and statesmen) of Hammurabi’s code from entering into modern legal systems. For example, in the United States, the eighth amendment ensures that criminal will not need cast themselves into rivers or worry that their sons will be killed.

*Lex talionis* and Hammurabi’s code rarely provide a good criterion within Lincoln-Douglas debate. As discussed earlier, most modern societies and modern thinkers have taken steps to minimize the vindictive nature of this philosophy. Instead, I would use the concepts to illustrate that justice must include *an* element of retribution, while avoiding pure vengeance, and that equality before the law, vis-à-vis a clear legal code, has been a historical necessity to even the crudest forms of justice.

An understanding of *lex talionis* is most important, however, when considering how to attack criteria or standards of other debaters. Often, other debaters will use a seemingly complex standard that simplifies into nothing more than fancy eye for an eye justice. For example, a few years ago, I saw many debaters use criteria of “reciprocity or reciprocal duties” to affirm the resolution “Capital punishment is justified.” Their logic amounted to the following: when a citizen commits a murder, society has an obligation to put the murderer to death in order to ensure that the punishment fits the crime through reciprocity. Good negative debaters attacked this by pointing out that the logic of reciprocity was really just another way of saying that capital punishment is justified using *lex talionis* as basis for justice. If strict reciprocity (killing a murderer) is so valuable, then why is it that society doesn’t rape rapists or beat batterers? Thus, a knowledge of *lex talionis* can help debaters refute standards that are based upon strict reciprocity or eye for an eye justice.

As Mahatma Gandhi said: “An eye for an eye and a tooth for a tooth will simply make the entire world blind and toothless.”

Now, let’s fast forward a few (hundred) years...

**Greco-Roman.** Evidence from ancient Greek and Roman scholars has been on the decline in Lincoln-Douglas, especially with more modern, pragmatic topics concerning issues such as economic sanctions or nuclear weapons. However, quotes from Plato, Aristotle, Herodotus, etc... can add a degree of validity to an argument that is hard to do with modern scholars and can be very powerful if done correctly. Although, scholars from these eras rarely directly addressed most Lincoln-Douglas topics directly, they certainly addressed them in indirect ways.

For example, on this year’s (2001) national topic, “on balance, violent revolution is a just response to oppression,” a debater quoting the commentary of Thucydides discussing the civil war in Corcyra will probably carry more weight than a quote from an unknown modern professor. The key, however, is to *make it relate to the topic*. For example, one might say: Thucydides, comments that “as a result of these revolutions, there was a general deterioration of character throughout the Greek world...there were savage and pitiless actions into which men were carried not so much for the sake of gain as because they were swept away into an internecine struggle by their ungovernable passions.”<sup>48</sup> Thus, through this historical example, we can see how violent revolutions inherently jeopardize my value of human dignity.

My point here is that debaters should not be afraid to use sources or evidence from this era. In fact, it often adds credibility to a case; debaters should take care to make it relevant, however, by making direct connections back to the topic and value and by supplementing Greek theory with modern evidence as well.

One example from this era that is frequently used, however, is Plato’s account of Parable of the Cave. It was actually formulated by Socrates and recorded on paper by Plato.

Socrates says: “...here is a parable to illustrate the enlightenment or ignorance of our nature:--Imagine human beings living in a sort of underground den, which has a mouth open towards the light and reaching all across the den; they have been here from childhood, and have their legs and necks chained so that they cannot move and can only see before them; for the chains are arranged in such a manner to prevent them from turning round their heads. At a distance above and behind them the light of a fire is blazing, and between the fire and the prisoners there is a track...”

Socrates continues to discuss how the humans in the cave see shadows flickering off the walls of the cave, illuminated by the fire, and perceive this to be reality. Then he considers what would happen if a human was set free from his chains and saw the outside world. He states that the man would contemplate his nature, never want return to his former state of being, and would most likely be ridiculed by the others in the cave were he to return to it.

“This allegory, I said, you may now know consider in terms of the previous argument; the prison is the world of sight, the light of the fire is the sun, the ascent and vision of the things above you may truly regard as the upward progress of the soul into the intellectual world...my opinion is that in the world of knowledge the idea of good appears last of all and only with an effort.”

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<sup>48</sup> History of the Peloponnesian War, Book III, 83-85

Debaters often use this allegory within cases to illustrate a variety of points. Few of them realize, however, that it was originally articulated by Socrates to Plato in effort to explain the wisdom with which a ruler of an ideal state (the Republic) needs to govern. “until philosophers are kings, or the kings and princes of this world have the spirit and power of philosophy...cities will get no rest from troubles and neither will mankind. Then only will this State of ours see the light of day with a good chance of survival.”<sup>49</sup>

Hence, the allegory of the cave is really a standard of wisdom for political governance. It can serve as a powerful articulation that intellect must be united with power if any nation or state is to flourish. As previously discussed, however, the ideas espoused by Plato here can be overly broad; the key, once again, to using a sweeping concept such as the allegory of the cave is to establish a strong link to your case or when refuting an opponents case. A good example of how this could be used arose during the recent topic “The possession of nuclear weapons is immoral.” Many negative debaters used historical examples from the era of détente, when Henry Kissinger and President Nixon pursued foreign policy strategies based upon “mutually assured destruction.” An affirmative debater, however, could have easily turned this logic on its head: mutually assured destruction and détente worked, in part, because of Kissinger’s larger approach to foreign policy known as realpolitik. In short, realpolitik, was the politics of power—whatever worked, was okay. This idea of “might makes right” is evident in many political strategies and is applicable to many debate resolutions (economic sanctions, intervention by one nation in the domestic affairs of another, the principle of universal human rights ought to take precedence over conflicting national interest are just a few examples that have arisen in recent years). In the case of nuclear weapons, an affirmative debater could use Socrates to supplement an argument discrediting realpolitik and any power-based foreign policy (i.e. mutually assured destruction) as immoral. The rather amoral nature of Nixon-Kissinger foreign policy runs contra to Socrates dire warning that rulers must have the “spirit and power of philosophy,” thus setting up the framework for a larger argument against realpolitik tactics.

Finally, the allegory of the cave is useful whenever a debater wants to illustrate that human beings simply do not know enough to implement a policy. The resolution “Human genetic engineering is morally justified” would have provided a good opportunity for negative debaters to use the allegory of the cave to illustrate our relative lack of knowledge on the topic, which prevents leaders of society from using it properly (uniting intellectual with scientific power).

And now, on to fair Verona where we lay our scene...well, not exactly, but the next topic does have roots in Italy...

### **Machiavelli and The New State**

Niccolo Machiavelli was a writer heavily involved in the political life of the Italian Renaissance. His observations of this government led him to write his most famous work *The Prince*. While it is not a work of advice so much as observation, it artfully advanced many less than ethical principles from which statesmen could govern.

“Whoever, therefore, on entering a new Principedom, judges it necessary to rid himself of enemies, to conciliate friends, to prevail by force or fraud, to make himself feared yet loved by his subjects, followed and revered by his soldiers, to crush those who can or ought to injure him, to introduce changes in the old order of things, to be at once severe and affable, magnanimous and liberal, to do away with a mutinous army and create a new one, to maintain relations with Kings and Princes on such footing that they must see it is in their interest to aid him, and dangerous to offend, can find no brighter examples than in the actions of this Prince...”

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<sup>49</sup> *The Republic of Plato*, B. Jowett, Oxford, 1881

To Machiavelli, a ruler had little political obligation to his subjects. His only incentive to rule fairly was self-preservation—if he didn't he risked being overthrown. This motive of self-preservation also caused Machiavelli to conclude: "Upon this a question arises: whether it is better to be loved than feared or feared than loved? It may be answered that one should wish to be both, but, because it is difficult to unite them in one person, it is much safer to be feared than loved, when, of the two, either must be dispensed with."

Machiavelli's observations and subsequent commentaries are rarely used as a criteria or argument in a Lincoln-Douglas case because they are so devoid of ethical considerations. Rather, a general familiarity with the philosophy of *The Prince* is important because it helps debaters discern the difference between competing political philosophies: the preceding philosophy of Plato, as shown in *The Republic* is a stark contrast to Machiavellian thought. Good debaters can often recognize and characterize a philosophy devoid of ethical consideration as "Machiavellian" within rounds to help discredit it.

One thing for which Machiavelli can be used effectively is to illustrate why a policy or practice will result in the overthrow of a government. Debaters should be wary of credibility attacks, though, because of Niccolo's bad rep among judges.

But moving on to a more upbeat topic...

### **Montesquieu and The Spirit of the Laws**

The baron de Montesquieu (1689-1755) was one of the most influential French writers of the seventeenth century. His masterpiece, *The Spirit of the Laws*, provided the philosophical basis that was used during many revolutions at that occurred towards the end of the eighteenth century. Of prime importance among these, of course, is the American Revolution; with the notable exception of John Locke, Montesquieu can be said to have had the most impact of any enlightenment age thinker on the founding fathers of this country.

Consequently, Montesquieu provides a view of the law as a means to confine citizens to their own collective reason. "Formed to live in society, he might forget his fellow-creatures; legislators have, therefore, by political and civil laws, confined him to his duty...Law in general is human reason, inasmuch as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be only the particular cases in which human reason is applied."

Hence, Montesquieu provides a very novel theory for the existence of laws: pure human reason. This is in contrast to the days of old when laws were legitimized by power or religious figures. Additionally, Montesquieu makes many practical arguments for government institutions, which still affect us today; among these are a separation of powers and federalism.

*The Spirit of the Laws* is a good place to look during the research of any topic concerning United States law or government. It was not only a guiding document for many members at the Constitutional convention but Montesquieu also articulates the philosophy behind many of our existing institutions in it.

**Bentham, Mill and Utilitarianism**

Jeremy Bentham (1748-1832) was one of the premier contributors to the philosophy of liberalism which came to influence government, enterprise and free trade both in England and abroad. One of the other main proponents of this philosophy, Adam Smith, published his landmark *Inquiry into the Nature and Causes of the Wealth of Nations* which also urged that the intelligent pursuit of individual self interest was within a nation's best interest.

While Smith focused on economic matters, Bentham took a more philosophical approach in his work *Introduction to the Principles of Morals and Legislation* in which he established his influential doctrine of *utilitarianism*.

Bentham derived the heart of utilitarianism when he read Joseph Priestly's *Treatise on Government*, which mentions the phrase: "the greatest happiness of the greatest number." This statement—which often comes up in Lincoln-Douglas rounds—forms the basis of the philosophy referred to as utilitarianism. Bentham expounds upon it in the aforementioned work, stating, "Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection will serve but to demonstrate and confirm it. . . . The *principle of utility* recognizes this subjection and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and law. . . . By the principle of utility it is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness."

Thus, the "greatest happiness" principle of utility, as stated by Bentham stresses the consequences of an action and particularly whether it serves to promote happiness. When this principle is applied to governments, it ends up equating to the "greatest good for the greatest number." Debaters should be wary of running utility as a criteria, especially the version advocated by Bentham, within rounds for two reasons 1) It does not take into consideration whether the intent or means of an action are moral or not; 2) It allows for the disenfranchisement of a minority population or an individual by an action as long as that promotes the general happiness of a majority.

By pointing out these two pitfalls of utility, I hope that debaters will not be completely discouraged from using it within their cases; instead, they should just take extra care to make sure that utility is a suitable philosophy to consider the morality of the action in question. The best actions to take into consideration are ones which have no clear intent (especially not a malicious one) and either have a good means or a variety of means. A good example how utilitarianism can be applied arose during the topic "The possession of nuclear weapons is immoral." A strong case could be made, from either side, that there is no singular intent when possessing nuclear weapons and that the mere act of possession is inherently amoral. Thus, the only thing left to evaluate is the consequences of the possessions of nuclear weapons—whichever side can promote the greatest happiness should win the round. After setting up this standard of morality, an affirmative debater could argue that the threat of a nuclear holocaust effectively causes fear and does not promote happiness whereas the negative could argue that the proven security afforded to a state and its citizens as the consequence of nuclear weapons possession promotes more happiness than an irrational fear (see: mutually assured destruction theory) of a nuclear holocaust.



The point of this example is that utilitarianism—despite its flaws and scope—can effectively be used in a debate round provided that it is used on the correct topics. Debaters should also look into Mill's modifications on Bentham's utility. (below)

### Mill and the Reform of Utility

John Stuart Mill (1806- 1873) was an influential scholar whose writings have made significant contributions to moral philosophy (*Utilitarianism; A System of Logic, Ratiocinative and Inductive*) political theory (*On Liberty*) societal matters (*Principles of Political Economy; Considerations on Representative Government*) and feminism (*The Subjection of Women*).

While it's not possible to address all the issues Mill discussed in this paper, I would highly recommend perusing his philosophies during case research. His works, especially *On Liberty*, are usually great sources for at least one side of a Lincoln-Douglas debate. I say this because Mill is modern enough to more directly address issues in Lincoln-Douglas than ancients such as Aristotle or Plato; however, he is established enough to give him a bit more credibility than is given to some more contemporary philosophers such as Nozick or Rawls. Finally, Mill is just easier to understand than many other philosophers. That's not to say that you should abandon using a somewhat complex philosophy, it's just been my experience that debaters often grossly misuse Kant's rather cryptic writings and others whereas Mill is rarely misrepresented.

The first thing you should know that concerns Mill is that he vastly modified Bentham's version of utilitarianism. As stated earlier, Bentham's ideas of utility became very influential among political and business circles of the day. Unfortunately, they also allowed for grave abuses. The New Poor Law of 1834, for example, turned parish relief into workhouses for the poor. Basically utilitarianism allowed for the blatant violations of an individual's rights if it benefited society as a whole. This provides a horrible standard in debate rounds—one could make a convincing case that under utilitarianism, slavery is a moral system because of the economic benefits that result from the exploitation of the minority.

Thus, debaters who contemplate using, or arguing against utility, should be familiar with Mill's modifications to the original system proposed by Bentham. Mill basically tries to reconcile an element of individual well-being with the "great happiness of the greatest number" principle. The result, rule utilitarianism, provides a better standard for debaters to use during rounds. Mill creates this emphasizing that "happiness" is not simply the presence of pleasure but also the absence of pain. Moreover, he clarifies that pleasure, since the days of the Epicureans, has not referred simply to physical gratification but also to "a manner of existence which employs their faculties." A supporting quote from Epicurus (342- 270 B.C) might be that "Pleasure is the beginning and end of the blessed life," he (Epicurus) further urged "prudence in the pursuit of pleasure." Mill supports his line of logic by explaining that: "Few human creatures would consent to be changed into any of the lower animals, for a promise of the fullest allowances of a beast's pleasures; no intelligent human being would consent to be a fool...no person of feeling and conscience would be selfish and base...A being of higher faculties requires more to make him happy...he can never really wish to sink into what he feels to be a lower grade of existence."

Thus, Mill establishes that that happiness isn't simply physical gratification; for humans, it is intellectual and emotional pleasure. He considers the reasons for this and concludes: "its most appropriate appellations is a sense of dignity, which human beings possess in one form or other, and in some, though by no means in exact proportion to their faculties, and which is so essential a part of happiness of those in whom it is strong, that nothing which conflicts with it could be, otherwise than momentarily an object of desire to them."

Hence, Mill attempts to humanize utilitarianism by 1) emphasizing that it tries to avoid pain; 2) expand the definition of pleasure to include dignity. These two modifications to utilitarianism make Mill's version much more amenable to a debate round than that of Bentham. The most important thing to do when using utilitarianism as a criterion is to emphasize that, as argued by Mill, **it does not promote disenfranchisement of individuals or a minority in the name of pleasure.** The best way to argue it would be to use the aforementioned principles outlined by Mill. One could even compare it to our modern American system of majority rule (democracy) with certain protections for the individuals (i.e. Bill of Rights, etc.) But I can't overemphasize how important it is to establish this humanitarian consideration early in the round; if it is challenged later in the round, with examples such as slavery and imperialism being justified under utilitarianism, it can be devastating to your case.

On the other hand, when arguing against utility, one must emphasize that even with Mill's reform of the philosophy, it still does allow for the harm of individuals in the name of collective benefit. In fact, later philosophers, notably John Rawls in *A Theory of Justice* (discussed later), have developed philosophies as a direct challenge to utilitarianism precisely because of this problem. Although you might not be able to get away with saying that rule utility promotes slavery or imperialism, you could make a strong argument that it does not adequately protect freedom. Tailoring that to the resolution, it becomes easier to argue that a just society, or political system, **MUST** protect the natural rights of individuals (i.e. life, liberty, property) against abuses by the state, in which case, utilitarianism—of any version—does a rather lackadaisical job.

Now, I'd like to move on to the mother of all political standards/duties in debate rounds. Yes, you know what I'm talking about...

### **The Social Contract**

The social contract, in its various forms, makes frequent entrances into Lincoln-Douglas debate rounds. It is the most frequent idea that is referenced when dealing with any notion of political obligation or duty. Consequently, it's no surprise that a lot of ink has been spilt on the topic within the pages of this criteria handbook—both by myself and by the other authors who contributed to this volume. I'd strongly recommend that any debater, new or old, try to read all the varying social contract analysis presented in this criteria handbook as it will almost certainly prove useful.

From my experiences, I've seen four main social contract theorists who are used during debate rounds (in order of descending popularity): Locke, Hobbes, Rousseau, and Rawls. Thus, I'll first present a brief synopsis of each philosopher's social contract theory, paying special attention to the nuances between them. Then I'll address general strategy on how to argue and how not to argue the social contract as criteria.

### **John Locke and Two Treatises of Government**

By examining the social contract set forth by Locke in his *Two Treatises of Government*, we can get a good idea of the concept and it's basic framework which is used in most debate rounds. For research purposes, the Second Treatise is more useful to prepare for debate rounds. Locke necessarily begins this by addressing the "state of nature." This hypothetical condition describes the nature of political duties among men before the existence of governments. Two characteristics define the state of nature: 1) A State of Perfect Freedom; 2) A State of Equality.

Locke defines the first as "to order their Actions and dispose of their Possessions and Persons as they think fit within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man." He continues to define the state of equality as "wherein all the Power and Jurisdiction is

reciprocal, no one having more than another: there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature and the use of the same faculties, should also be equal one amongst another without Subordination and Subjection...”

In this state of nature—with absolute freedom and absolute equality—Locke argues that men must still obey the Law of Nature, namely reason, and not harm the “life, health, liberty or possessions” of another. These rights—commonly summarized as life, liberty and property—are fundamental, natural rights. According to Locke, even in the state of nature, men do not enjoy a “State of License” to harm or deprive others of natural rights. In fact, accordingly, to Locke, there are only two legitimate uses of force: Reparation and Restraint. Reparation and restraint basically lay the foundation of punishment for a crime. “...every Man hath a Right to punish the Offender, and he be the Executioner of the Law of Nature.”

Using the analysis presented thus far, we can see how Locke’s idea of a social contract has implications on political duties. First, Locke says that even in a state of nature, with perfect freedom and equality, men have a duty to each other not to infringe upon the natural rights of another (life, liberty, property) except in cases of **punishment** because that is in accordance with reason, the guiding principle behind the law of nature.

### Locke and Punishment

Locke clarifies the specifics of punishment further: every punishment must be proportional to the crime committed (*lex talionis*, anyone?) without being excessively punitive. Locke also specifically relates punishment to deterrence: “Each Transgression may be *punished* to that *degree* and with so much *Severity* as will suffice to make it an ill bargain to the Offender, give him cause to repent, and terrifie others from doing the like” Although this quote is taken in the context of the state of nature, one can easily see how the logic applies even under an established government.

Locke also discusses punishment in the context of a state of war. “...I should have a Right to destroy that which threatens me with Destruction... This makes it lawful for a Man to *kill a Thief*, who has not in the least hurt him, nor declared any design upon his Life, any farther then by the use of Force...”

### State of Nature and the State of War

Aside from the state of nature, Locke discusses another condition of society which often arises during debates—the state of war. It is important to know the difference between the two, as Locke assigns different political duties and rights to each: “Men living together according to reason, without a common Superior on Earth to appeal to for relief, with Authority to judge between them, is *properly the State of Nature*. But force, or a declared design of force upon the Person of another, where there is no common Superior on Earth to appeal for relief, *is the State of War*: And ‘tis the want of such an appeal gives a Man the Right of War even against an *aggressor*, though he be in Society and a fellow Subject.” Locke continues to illustrate the point by giving the example of a thief. He states that if a thief robs him of his possessions, he cannot harm him except by appealing to the law. If, however, the thief tries to rob him and his life is in danger, he has the liberty to kill the thief in self-defense. Hence, one of Locke’s guiding principles in the State of War is a right to **self-preservation when there is no social force to protect rights**.

Debaters who argue Locke’s social contract often present the state of nature as an unverifiable condition that really does not exist today. Here’s a little known fact that might help you trip them up if you’re arguing against them: according to Locke the state of nature still exists in the modern world, throughout the world. “‘Tis often as a mighty Objection, *Where are, or ever were, there any Men in such a State of Nature?* To which it suffice as an answer at present; That since all *Princes* and Rulers of *Independent Governments* all through the World, are in a State of Nature, ‘tis plain the World never was, nor ever will be, without Numbers of Men in that State.”

**The State of Nature's Implications on how to argue the Social Contract and International Relations**

This is a key quote which has an important implication on how the social contract is applied to international relations. I've often seen rounds about topics that have an international focus (i.e. economic sanctions) where debaters will try to use the social contract. One argument I've heard frequently is that there is a "universal social contract" that exists between all citizens and all governments. In this case of the economic sanctions topic, this argument was used to back the position that economic sanctions, which cause hardship, violate that contract.

On the other hand, I've heard debaters argue that each individual country is an entity of its own, each with its own social contract. Therefore, according to this position, the citizens of one country have no political or moral obligations under social contract theory to any other citizen of any other country in the world and economic sanctions are not immoral because they do not violate any duties or obligations.

Usually both of these arguments were supported with a quote from a social contract theorist, namely Locke, which was taken completely out of context and provided little real support for the claim.

On the first argument, that there is a "universal social contract" quotes and theories from Locke, Hobbes and other social contract theorists usually do little more than muddle the issue. Instead of addressing the argument from a social contract perspective it is usually more beneficial to frame the argument in terms of a duty to human rights. This works better for two reasons 1) No matter how social contract theory is twisted, on most matters, foreign governments have no obligations to domestic citizens. For instance, if I, a resident of Solon, Ohio, am robbed by someone in the United States, I have no claim to ask the French government to bring the criminal to justice. (Of course, governments cooperate with each all the time in apprehending criminals who flee a native country, but that's more a matter of courtesy and necessity than any real moral claim.) Similarly, as a United States citizen if I am sentenced to be executed for committing a capital crime I can hardly expect the French government (who are opposed to the death penalty) to intervene on my behalf. Thus, if there is a theoretical "universal social contract" it can be pragmatically shown that no shown condition has arisen yet.

A stronger argument would be that United States citizens have the same obligations to foreign citizens as they would have in the state of nature: namely a negative duty not to infringe upon their human rights (life, liberty, property). Applying this to resolutions such as economic sanctions is easy—the argument would simply be that sanction cause death and loss of property, both of which are infringement upon natural rights. Remember, Locke states that the state of nature is NOT a state of license. This is also supported by documents such as the United Nations Universal Declaration of Human Rights, and various papers by other humanitarian organizations (Red Cross, Amnesty International, etc..) Therefore, one can make a strong human rights arguments utilizing social contract theory as evidence for a negative duty not to infringe upon natural rights.

I'd now like to address the second argument presented above, that each country has its own separate social contract. This argument is frequently used by debaters who have values such as national security, sovereignty or safety within their cases. Generally, however, they use the evidence/theory of independent social contracts to support the claim that individuals or authorities of one country have no contractual obligations to foreign citizens or governments. The argument can be supported by Locke (see above, the world is currently in a state of nature) on many points provided that the debater uses careful phrasing. The one crucial point, however, that really cannot be twisted under social contract theory, as stated by Locke, is that natural rights must be respected except in cases of reparations or restraint. More often than not using national security, sovereignty, and safety as values is not in accordance with this theory.

That's not to say that in the real world these ideas haven't had significant influence on international relations. One needs look no further than Henry Kissinger and realpolitik for evidence of policy based on power rather than morality. If you do need to argue that a value or policy that harms foreign citizens in the name of domestic benefits, don't use social contract theory unless you can prove or argue that the policy is not directly infringing or targeting natural rights. For example, during the economic sanctions topic, one could argue that although sanctions may indirectly harm property, social contract theory never provides for a natural right of trade with foreign countries. (Of course, the point could be \*gasp\* argued that sanctions target the natural rights of impoverished citizens, but you get the idea that there is room for interpretation)

### After the State of Nature—Political Societies

Locke continues on to discuss how men, by nature, tend to form societies for reasons of “Necessity, Inclination and Convenience.” He further discusses the tendency of mankind to form various relationships (man and woman, master and slave, man and family, etc...) and the obligations and duties of each. Then Locke discusses political society—a concept that is often referenced in debate rounds. Basically, to Locke, and other social contract theorists, political societies arise when men give up portions of their liberty in order to obtain security and order. “Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate and subjected to the Political Power of another, without his own *Consent*. The only way whereby any one devests himself of his Natural Liberty and *puts on the bonds of Civil Society*, is by agreeing with other Men to joyn and unite into a Community, for their comfortable, safe and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it.”

The brunt of Locke's case for forming a society, however, is always centered around the protection of natural rights: “The great and *chief end* therefore, of Mens uniting into Commonwealths, and putting themselves under Government, *is the Preservation of their Property*. To which in the state of Nature there are many things wanting.”

\*It should be noted that Locke defines property, in the case of the preceding quote, as “the mutual *Preservation* of their Live, Liberties and Estates...”

Locke also clarifies how power should be used within a society, along with some anomalies of power.

### Locke's Thoughts on Paternal, Political and Despotic Power

I'm going to go out of order and address political power first, as Locke discusses how government must use their power, once men have given up liberties and entered into a civil society. Basically, Locke says exactly what you would expect—political power cannot be used for any other purpose except that which men who entered in a civil society expected it to be used: protection and punishment. As he states, “So that the *end and measure of this Power*, when in every Man's hands in the state of Nature, being the preservation of all of his Society, that is all Mankind in general, it can have no other *end or measure* in the hands of the Magistrate, but to preserve the Members of that Society in their Live, Liberties, and Possessions; and so cannot be an Absolute, Arbitrary Power over their Lives and Fortunes, which are as much as possible to be preserved; but a *Power to make Laws* and annex such *Penalties* to them, as may tend to the preservation of the whole, by cutting off those Parts, and those only, which are so corrupt, that they threaten the sounds and healthy.” Basically Locke argues that governmental authority must be used with the goal of protection natural rights and may only legitimately exercise its power with that intention.

I'd like now to focus on two other power structures—paternal and despotic—which surface during debate rounds as well.

**Paternal Power.** Most debaters usually don't think of John Locke when dealing with resolutions concerning adolescents or juveniles. In the past few years, however, there have been resolutions (establishing a safe educational environment in grades K-12 justifies infringement of students' civil liberties; violent juvenile offenders ought to be treated as adults in the criminal justice system; discriminations made by society on the basis of chronological age alone are justified) which mandate that debaters make arguments concerning the rights and duties of juveniles to society and vice versa. While I certainly don't recommend using Locke as a primary reference when writing your cases—he doesn't devote much time/space to the issue—he can help you set up a framework from which to argue, or he can provide supplemental evidence to a point you are already arguing.

According to Locke, parents have a natural duty/right to watch over their children until they are able to take care of themselves. “*Parental Power* is nothing but that which Parents have over their Children, to govern them for their childrens good, till they come to the use of Reason, or a state of Knowledge, wherein they may be supposed capable to understand that Rule, whether it be the Law of Nature, or the municipal Law of their county they are to govern themselves by...”

Thus, Locke plainly states what most of us in the twenty-first century accept as common knowledge—parents have power over their children because they are not able to fend for themselves at a young age, nor are they able to understand how to live in society. This is nothing startling, but Locke adds two caveats to the principle: 1) Once children reach the age of “Reason” they are free from the bounds of this parental power. 2) This parental power may not compromise a child's individual rights.

As Locke states on these two ideas: “neither can there be any pretence why this parental power should keep the Child, when grown to a Man, in subjection to the Will of his Parents any farther...” On the second point, concerning a child's individual rights, Locke notes, “*The Power of the Father doth not reach* at all to the *Property* of the Child, which is only in his own disposing.” Remember that Locke generally refers to property in a broader sense, inclusive of other natural rights, and not simply possessions.

Locke's theories can really be used to set up either side of the debate. For example, on the resolution “establishing a safe educational environment in grades K-12 justifies infringement of students' civil liberties” one may argue that the school, acting in *loco parentis* (as the parents) have the power to govern over children in order to protect them. On the negative, one could use Locke to support the argument that an infringement on civil liberties amounts to an infringement on natural right and, especially in the case of high school seniors who may have already even reached the majority, the state, acting as parents is over-extending its parental power by keeping parental power over an adult.

Of course, either side of the debate would have to be supplemented by modern scholars, legal arguments, etc... As I said earlier, I wouldn't recommend using Locke as your primary source; I would, however, recommend using him to help set up the premise from which you argue.

**Despotic Power.** Locke defines despotic power, simply as “Absolute, Arbitrary Power one Man has over another, to take away his Life, whenever he pleases.” To Locke, as to us (I hope), this is an unacceptable condition. Locke likens it to slavery and clarifies that the only time despotic power can be justly exercised is as a result of *forfeiture*, namely in a state of war. The example he gives is that of slaves being taken captive in a war.

For Lincoln-Douglas purposes, despotic power is not very important. I would, however, know it just in case you debate someone who advocates something along the lines of despotic power; Locke will help negate the premise.

Ok, now on to more applicable sections of Locke, such as the dissolution of government.

### Dissolution of Government

This is one of the most important sections of the Second Treatise of government and I'd highly recommend that anyone who thinks this section of Locke applies to a topic ought to read the actual section within the Second Treatise. As I write this (2001) the nationals topic is, resolved: "On balance, violent revolution is a just response to oppression." If I were a debater prepping for nationals, I would not only read this section for refutation purposes—because others will surely use Locke—but would also consider using it in my own case.

So what does Locke say? Well, boiled down, he first rehashes that governments derive their authority from the mutual consent of their citizens. Thus, their power has is given to them in the trust that it will be used in the best interests of society; foremost among these interests are the protection of naturals among its citizenry.

When a government abuses this power, Locke states that people have the right to institute a new government, by force, if necessary. He speaks of what happens to the legislature or the supreme executor when they abuse power through "Ambition, Fear, Folly or Corruption," when he states, "By this breach of Trust they *forfeit the Power*, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty, and, by the Establishment of a new Legislative (such as they shall think fit) provide for their own Safety and Security, which is the end for which they are in Society."

So what constitutes a "breach of Trust"? Well, initially Locke states it's whenever, "the *Legislators endeavour to take away, and destroy the Property of the People...*" Keeping in mind that Locke's broad definition of property (see \* above) includes other natural rights, this is open to interpretation. It should be noted, however, that punishment (which inherently takes away or compromises natural rights, such as liberty) is not what Locke is talking about here. Yet, Locke does give the reader clear examples of when the Legislative or Executive portion of government is overstepping its bounds, in the event that they "...*endeavour to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the Peoples...*" \*\* Note the difference between this quote and the first—the first quote states that when government tries to destroy the natural rights of people, it gives them a right to revolt; the second states that when governments have *absolute power* (even if they don't exercise it) over citizens, it gives the populace a right to revolt or retake that power.

So far, I haven't told the veteran debater anything too surprising about Locke's ideas on the dissolution of government. I'd like to point out, however, that although Locke was a brilliant theorist he was also considerate of practical considerations in government. Thus, he considers a very important objection to his argument: if people revolted all the time, then countries would be in a constant state of chaos. There would never be order because no government is perfect and people would always be rebelling against something unjust within the government in power. As Locke puts it, the objection is that allowing people to revolt whenever they felt their rights are threatened might be "destructive to the Peace of the World."

Locke's refutation is twofold. First, on a philosophical level, Locke places the blame for chaos squarely upon the abusive government—not on the people who are being oppressed. "They may as well say upon the same ground, that honest Men may not oppose Robbers or Pirates, because this may occasion disorder or bloodshed. If any *mischiefs* come in such Cases, it is not *to be charged* upon him, who defends his own right, but on *him*, that *invades* his Neighbours."

And, considering the unjust alternative, Locke adds, “If the innocent honest Man must quietly quit all he has for Peace sake, to him who will lay violent hands upon it, I desire it may be consider’d, what kind of Peace there will be in the World, which consists only in Violence and Rapine; and which is to be maintain’d only for the benefit of Robbers and Oppressors. Who would not think it an admirable Peace betwixt the Mighty and the Mean, when the Lamb, without resistance, yielded his Throat to be torn by the imperious Wolf?”

Pretty strong words for Locke. It shows how adamantly he believes that oppressed people have a right to overthrow oppressive governments. In addition to this philosophical basis, Locke refutes the previous objection on a practical basis. Once again, the objection went as follows: people will always be revolting, hence societies will always be in disorder and *nobody* will be secure, so everyone loses. (This, by the way, is Thomas Hobbes’ view on people’s right to revolt as well.) Locke answers it with one simple feature of human nature: people don’t want to change. Simply put, overthrowing governments is difficult work, with certain pitfalls (revolutions usually aren’t very pretty), and risks, for little certain gain (nobody knows if a revolution will succeed); thus, people only revolt when their rights are harmed to the extent that they would rather risk losing what they have in the status quo (“our lives, our fortunes, our sacred honor” for anyone of you American history buffs) for a dicey shot at a better government in the future. In order for people to revolt, there must be widespread, blatant abuses on the part of the government. As he puts it, “For till the mischief be grown general, and the ill designs of the Rulers become visible, or their attempts sensible to the greater part, the People, who are more disposed to suffer, than right themselves by Resistance, are not apt to stir. The examples of particular Injustice, or Oppression of here and there an unfortunate Man, moves them not. But if they universally have a pervasion, grounded upon manifest evidence...who is to be blamed for it?”

I’d recommend using, or at least referencing, Lockean theory whenever a resolution arises dealing with people’s right to revolt or change government. As you’ve read, he is very supportive of the rights of an oppressed people and pragmatically argues that revolt will only occur if people are put in pretty intolerable conditions.

Not all philosophers agree with Locke, however, so his analysis should not be taken as the unquestionable truth. In fact, not even all famous social contract theorists agree with him. Thomas Hobbes, especially when it came to the “dissolution of government,” has very different ideas than Locke that are useful for the other side of debate rounds.

### **Hobbes and Leviathan**

The philosophies and writings of Thomas Hobbes (1588-1679) often come up in Lincoln-Douglas debate, so it’s important to have knowledge of them both to consider using them and when refuting others. In *Leviathan*, Hobbes analyses motives and patterns behind political behavior. His conclusion is one that supports authoritarianism—which is probably related to the fact that he lived during a civil war. The *Leviathan* argues many important ideas. First, Hobbes argues that humans, for the most part, are equal in intellect and physical strength. What differences exist are negligible and can be circumvented by men via numbers. From this condition of equality Hobbes states that there are three principal causes of quarrel among humans: competition, diffidence, and glory.

These three causes create confusion and disorder within human society, often leading to war or revolution. Thus, Hobbes maintains that it is the duty of the state to maintain **order** among all else. Hobbes believes this order is paramount and should be achieved at all costs—even sacrificing the rights of the few—otherwise, he fears that the alternative chaos/war is far worse: “Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same is consequent to the time wherein men live without other security than what their own strength and their own invention shall



furnish them withal.” This condition, is likened to a temporary “state of nature.” The equally grim conditions of this condition are summed up by Hobbes in a pretty gloomy sentiment: “and, which is worst of all, continual fear and anger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.”

As a result of this view, Hobbes condemns anything that would lead, either permanently or temporarily, to this “state of nature,” especially war or revolution. “To this war of every man, against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law: where no law, no injustice. Force and fraud are in war the two cardinal virtues.” Thus, Hobbes maintains that justice, and other notions of progress, can only result in a society with law and order.

I wouldn’t recommend using Hobbes as the end-all, be-all philosophy for a debate case. His theories, while very analytical and well presented, would probably be too autocratic for most judges. Rather, Hobbes and the *Leviathan* provide a reputable, influential source for any debate argument which emphasizes the need for order. For example, the current national tournament resolution “on balance, violent revolution is a just response to oppression,” is perfect fodder for Hobbesian theory. Negative debaters who argue that revolution is too great a price to pay for an overthrow of oppression will find a sympathetic author in Hobbes, as noted by the preceding quote.

As I discussed earlier, Hobbes also provides opposing theory to that of Locke. Whereas Locke emphasizes the ability to protect natural rights as a hallmark of civil society, Hobbes focuses on the ability of a society to provide relative security. The difference is best shown when each considers what to do under an oppressive regime. Locke would advocate the right of the people to revolt, as they have been put in a state of war with their oppressors (the regime). Hobbes, on the other hand, would say that the state of war is far worse than the conditions in an oppressive regime and therefore would advocate against any type of forceful revolt.

### **Rousseau’s take on the social contract, etc...**

Jean-Jacques Rousseau considered many of the same problems and concepts of the social contract in his essay on *The Social Contract* (creative title, isn’t it?). If the theme of Locke’s *Second Treatise* can be centered on protection of property rights and the ensuing dialogue between people and government to that effect, and Hobbes’ *Leviathan* focuses on the need for order and safety, then the overarching theme of Rousseau in *The Social Contract* would be the need to bring out the natural good in humans within society. As Rousseau says in his first book, “Man is born free; and everywhere he is in chains. One thinks himself the master of others, and still remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.” Thus, Rousseau thought that society—at least of his day—had deprived mankind of much of the natural goodness inherent in humans.

This is not to say that Rousseau favored the state of nature over civil society. In fact, any debater looking for quotes to support the need for structured government would find an eloquent arsenal of them—more poignant than Locke or Hobbes—in “The Civil State” section of Rousseau’s essay. “The passage from the state of nature to the civil state produces in man a very remarkable change, by substituting in his conduct justice for instinct, and by giving his actions the moral quality that they previously lacked.”

Still not convinced that Rousseau loves the civil state as much or more than Locke and Hobbes? Read a few lines further as he talks about it: “Although in this state, he is deprived of many advantages that he derives from nature, he acquires equally great ones in return; his faculties are exercised and developed; his ideas are expanded; his feelings are ennobled; his whole soul is exalted to such a degree that, if the

abuses of this condition did not often degrade him below that from which he has emerged, he ought to bless without ceasing the happy moment that released him from it forever, and transformed him from a stupid and ignorant animal into an intelligent being and a man.”

It doesn't get much clearer than that—Rousseau equates formation a civil state with the transformation of man from beast. Note also that Rousseau gives a specific (for a contract theorist anyway) standard for when a citizen should not support or revolt against his government: when the ills of a regime make it worse for its citizens than it would be in a state of nature.

Thus, Rousseau establishes a valuable standard that can be used in arguing when people ought to dissolve their government. I'd now like to address one other important section of *The Social Contract: The Right of the Strongest*.

### **The Right of the Strongest.**

With almost every resolution, there will be debaters arguing that because we can do an action, we ought to do it. If the resolution deals at all with the morality or justice of that action, (as it almost always does) this is very flawed logic. Nevertheless, even some veteran debaters will frame these power-based arguments (which are usually more dressed up than what I just stated) as a centerpiece of their case. Usually they'll work it into a value/criteria such as consequentialism or teleology. And when confronting these types of arguments, almost every debater, at some point, will have to use the argument “might doesn't make right.”

Well, guess who was one of the premier advocates of that principle? That's right—Rousseau! In the section “Right of the Strongest,” of his social contract theory, Rousseau philosophically argues by force can never be given any real moral weight. This section would be useful reading material/evidence for any debater who is trying argue that simply because we *can* do something doesn't mean that we *ought* to OR any debater who wants to argue that even if force is used to achieve something moral, that force is not moral. (means-ends arguments)

The first argument is pretty self-explanatory, so I won't spend any more time on it. The second argument, however, is a bit more difficult to grasp, so I'll clarify. Let's say we were arguing the current national's topic, resolved: “On balance, violent revolution is a just response to oppression.” Even with the tournament a few weeks away, it's not hard to predict that many affirmative debaters—using examples such as the American Revolution—will argue that the violence inherent in the resolution is a just response to oppression because it will end or reform the oppressive regime. So, keeping with the example of the American Revolution, this would mean that the actual violence of the war was a just response to English tyranny because it overthrew an oppressive regime.

Pretty straightforward, right? Well, putting myself in the shoes of the negative debater, I could see a new different attacks on this argument: 1) The American Revolution hardly achieves the breadth required to fulfill the “on balance” part of the resolution. 2) The affirmative has not adequately addressed the meaning of the term *violent* in the resolution. If we step back and analyze the affirmative's argument, it hinges upon the outcome of the revolution. In fact, there is no clear standard as to what can be done in pursuit of a non-oppressive regime, nor is a “good” regime necessarily the outcome of a violent revolution.

Using arguments along these lines, the negative can discredit any potential affirmative benefit of a violent revolution as uncertain or inconsequential and focus the debate squarely on the *method* or *means* of the action: violence.

That's where Rousseau is helpful. Rousseau argues that force is not an inherent right. As a "right" is a claim, nobody, even the strongest man, has a just claim to the use of force simply because he has that power. Conversely, people who obey force have no duty to do so; the only reason people obey force is, well... because they're forced to do so. As Rousseau states: "Force is a physical power; I do not see what morality can result from its effects. To yield to force is an act of necessity, not of will; it is at most an act of prudence. In what sense can it be a duty?"

Getting back to our hypothetical negative refutation, one could use Rousseau to discredit the violence used within a revolution as immoral thereby making arguments targeted at the means of the action. Moreover, the negative could argue that many revolutions do not have lasting effects of reform; many newly installed "reformist" leaders/regimes have a horrid record of turning into what they fought against, thereby targeting the ends of the action. (read: Castro; communism)

But perhaps the best argument is that a violent revolution does not produce a change in thinking...only an ideological revolution can do that. At best, violence can only secure *temporary* obedience. But as Rousseau cautions, even this isn't guaranteed: "...for if force constitutes right, the effect changes with the cause, and any force which overcomes the first succeeds to its rights. As soon as men can disobey with impunity, they may do so legitimately; and since the strongest is always in the right, the thing is to act in such a way that one may be the strongest. But what sort of right is it that perishes when force ceases?"

And for those of you out there (like me) who love to illustrate points with analogies, here's a good one: "If a brigand should surprise me in the recesses of a wood, am I bound not only to give up my purse when forced but am I also morally bound to do so when I might conceal it? For, in effect, the pistol which he holds is the superior force. Let us agree then, that might does not make right..."

As a final comparison to the national topic—let's say Rousseau's robber donated all the money he stole to charity, would that make his actions just? Of course not. The ends don't justify the means, a violent revolution, with the potential of massive innocent casualties can't be justified on the basis of a shaky prospect of reformed government. Couple that with an immoral means of violence (as proved by Rousseau) and the round goes negative.

Enough of the old contract theorists, let's fast forward to more modern philosophy.

### **John Rawls and Justice**

Among modern philosophers, John Rawls is a giant among men—kind of like Ayn Rand, except with credibility. (Just a joke, all you *Fountainhead* lovers!) Seriously though, whether or not you agree with his views, they've sparked much controversy in philosophical circles, and come up frequently in debate rounds, so you should have at least a fleeting knowledge of his theories.

I've actually found that Rawls, like Kant, enables many debaters who know his philosophies (or at least seem to know them) to win rounds by confusion more than any real substance. For this reason, debaters who are familiar with Rawls at least have the advantage that they won't be confused out of a round.

The principle work of Rawls which arise in rounds is a book entitled *A Theory of Justice* in which he outlines—of all things—his views of justice. More specifically, he constructs a new social contract theory in order to achieve his idea of justice. One of his principle objectives in doing so is to correct the injustices he felt (and history supports) are allowed under a system of utilitarianism. In constructing his theory of justice based on contractual obligations, Rawls tried to rectify what he saw as the main problem of utilitarianism: the violation of individual rights in the name of the majority benefit. (As I discussed earlier, Mill tried to rectify this with the Greatest Happiness, but didn't really solve the problem)

So how does Rawls present his version of the social contract? Well, he starts off with what's called the "**Original Position**." It's a theoretical group of people who are "rational, equal, and self-interested." Now these people are trying to create a rule or system of rules that will ensure that all their rights and duties are protected within a social system. Now, here's the kicker: all this hypothesizing is done behind a "veil of ignorance." The people won't know what their actual position in this society is (i.e. how powerful or rich they are); Rawls argues that this ensures people will create fair standards for all members of society.

Okay, that's all well and good, but how do Rawl's imaginary people (don't tell him I said that about his original position!) apply to us? Well, Rawls draws two **Principles of Justice** which he argues must be adopted by any community in the original position functioning behind a veil of ignorance.

- 1) Every person has an equal right to the most extensive basic liberty compatible with a similar liberty for others.
- 2) Social and economic inequalities are to be arranged so that they are both a) reasonably expected to be to everyone's advantage; b) attached to positions and offices open to all.

Before proceeding any further, I'd like to clarify why Rawls feels his premise for justice even ought to be accepted. His definition of justice can be summarized as "fairness, equity and honor." Honor is rather nebulous but Rawls specifically supports fairness and equity within the original position. It is equitable because all members of the community have an equal say into what society will be reformed; it is impartial due to the veil of ignorance, which guarantees that those in the original position do not skew their principles of justice to favor themselves. For example, they do not promote a tax break for the wealthy if they are rich, because they don't know what their true position in society is.

Basically, all of our Constitutional safeties—free speech, press, religion, etc... can be derived from the first rule. Also civil and political liberties such as the right to vote, enlist in the army, etc... can be derived from the first principle as well. The key part of this principle is that rights, and liberties must be arranged EQUALLY.

The second principle, which is the more controversial of the two, feeds off this idea of equality from the first. Part A, that social and economic inequalities must be arranged so they benefit everyone, has sparked a lot of debate. Consider, for example, if this idea (known as the **difference principle**) were applied to modern American society: it would mandate a mass redistribution of wealth from the rich to the poor in order to rectify the current inequalities that come with the difference in wealth between rich and poor. Rawls justifies this on the basis that although the rich sacrifice portions of their wealth it is for a "society of mutual cooperation." (this is sometimes referred to as the **minimax** principle—maximum benefit for minimum sacrifice.)

Hold on just a sec, though—Rawls isn't just another leftist socialist (although it might seem that way sometimes) in disguise. His difference principle entails more than just a redistribution of wealth; it means that as long as inequalities BENEFIT ALL they are okay. The famous example cited in this instance is that of slavery. Under Rawlsian system of justice, slavery could actually be justified as long as everyone in society INCLUDING the slave, were better off with it. This is the key difference between Rawlsian justice and utilitarianism—utility wouldn't consider (or consider minimally) an individual's rights, whereas Rawls considers it.

The second part the second principle is easily applied in modern American society already: a Congress person has more political power/representation/liberty than the average Joe Schmoe. This has come to pass, because, theoretically, everyone in society has agreed that it is more advantageous (for reasons of convenience) that we have a representative democracy, instead of having every single citizen vote on

every issue. Since (theoretically, anyways) the position of Congressperson is equally open to every citizen, this is justified under Rawls's second principle.

One more very important point I need to emphasize: **natural lottery**. Rawls justifies his principles (esp. 2A)--which would require mass redistribution of wealth, power if applied to America today—on the basis of the “natural lottery.” Basically, he argues that factors such as education, wealth, status, etc. are given to citizens based not upon any particular merit, but simply based upon a person's birth. According to Rawls, this is arbitrary, since a person may have to fortune to be born into a good or bad position but it leads to undeserved inequalities or advantages. (Hmm.....George W. Bush and Al Gore—those guys didn't get a leg up in politics due to their fathers, did they? ☺ ) Consequently, Rawls argues that a fairer system would be one in which this “natural lottery” was eliminated (or mitigated) by an enlightened society which gave people with fewer natural assets more considerations.

Rawls is extremely helpful whenever you want to argue any form of benefits for the disenfranchised or poor within society. Usually, debaters who want to use Rawlsian theory, use a value/criteria of “distributive justice” and then focus in on the specific principle (usually 2A) with which the resolution deals.

That 's a mouthful. Rawls is a powerful philosopher, but he is not without his critics, most notably another Harvard philosopher named Robert Nozick.

### Nozick's Critique

Robert Nozick critiqued many of Rawls arguments in his book *Anarchy, State, and Utopia*, published just three years after *A Theory of Justice*.

Nozick's first and most powerful critique is that Rawls unfairly allows the poor to benefit at the expense of the rich. Even granting the original position, Nozick argues that there is no benefit for the rich to sacrifice their wealth in support of the nebulous idea of a “society of mutual cooperation.” According to Nozick, the rich have to no tangible benefit, or clear answers as to how the sacrifice of their wealth/power will result in a better society for them.

Nozick's second argument attacks Rawls idea of the natural lottery. He gives a complicated example of students taking a test and different (bizarre) options of how to distribute the scores. The point of the example is that the veil of ignorance does not allow its participants to consider how people came by wealth (historical entitlement) but only considers ideas that have nothing to do with how people come by wealth (nonhistorical) such as equality.

A good example I've used, and seen used, to help illustrate this during rounds is the idea of inheritance. Rawls would basically consider inheritance an example of the natural lottery—a very arbitrary distribution of wealth given to an individual based upon chance. Nozick would critique this view by arguing that 1) A person has a right to pass his wealth on to his offspring; 2) His offspring are entitled to an inheritance as long as it is acquired legitimately.

The debates between Rawls and Nozick are wonderful, and if you have time, or the resolution is split between these two philosophers and their competing philosophies, I'd recommend researching this stuff further.

## General Pointers on how to argue the Social Contract

Ok, I've lectured you to death. You've read everything from the dissolution of government to the difference principle...how do you argue this stuff during rounds?

The key is to be specific. Don't fall into the all-too-common trap of using something such as "Locke's social contract" as your value criteria. This opens you up to way too many attacks and doesn't get your point across concisely. First of all, no matter how great these philosophers are, none of their philosophies/standards are perfect in all situations. (I remember somebody telling me during CX I couldn't even cite Thomas Jefferson during a free speech debate because he had slaves!)

The key to arguing any form of the social contract effectively is hone in on the part of the contract theory that applies to the resolution, and further hone in what side it supports. For example, if I were arguing the current nationals resolution, resolved "on balance, violent revolution is a just response to oppression," and writing my affirmative case, it wouldn't be a good to just use one philosopher, such as Locke, who support my case and run the value of the "social contract." As I stated earlier, the social contract is an extremely broad concept—each of these guys wrote volumes on it—and you really don't want to open the debate that wide. Instead, focusing on something such as "government legitimacy" would narrow the debate. Depending on how you were framing your case, this could be either a value or criteria. Personally, I'd recommend using it as a criteria and let your value be something broad and overarching, like justice. Now, specify even further. From reading these contract theorists, we get the idea, especially from Locke and Rousseau that people and government have duties to each other and when those duties are broken, people have the right to revolt against government. So, political legitimacy is closely linked with duties to each other, or reciprocal duties—in this case the people owe the government a loss of liberty and government owes its citizens a protection of their natural rights.

Remember that the best cases are ones that tie the criteria to each contention. In fact, it's a good idea, especially at nationals, to plan your cases accordingly in order to keep them clear.

Thus, the first contention in this hypothetical affirmative case (which, I thankfully, will never have to write) would deal with something such as reciprocal duties. Using contractarians such as Locke, it'd be easy to establish that people have a right to reform their government, by "force" if need be.

The second big step is to justify why *violence* is necessary. For this, it's probably necessary to stretch past Locke and contract theorists. Remember though, that contract theory, especially of Locke and Rousseau, did not take place in a vacuum. Their theories were monumentally influential in later times and a number of later scholars and leaders drew upon them to form their own philosophies. For the purposes of justifying violent revolution, the American patriots are probably the best source. (It doesn't get more direct than : "The tree of liberty must be refreshed from time to time with the blood of patriot and tyrants." But the same strain of thought can even be seen in later leaders. Take, for instance, Winston Churchill, during World War II: "You may have to fight when there is no chance of victory, because it is better to perish than to live as slaves."

The context of the two quotes is completely different but the point is the same—the protection of liberty is worth the violence; Locke would agree.

Keeping in mind that the second contention of the case needs to tie back into the criteria as well, it might be framed as something such as the "right to violently revolt." Thus political legitimacy can be split up into rights and duties, with a contention addressing each.

Please understand, that I'm not offering this as a perfect, or even good case, to run at nationals. I'm just using it to demonstrate how to weave social contract theory into cases.

**Final Thoughts** (with apologies to Jerry Springer)

It's a sad fact, but in the end, no amount of knowledge, prepping or practice will guarantee you success in a debate round. Without these three things, however, you're almost assuredly guaranteed defeat. I hope that this survey paper not only helps your research but also stimulates your intellect—if so, no matter what happens in your rounds, you've already won.  
Happy trails and good luck.,