The Victory Briefs Value Handbook Volume II

Insights on political and ethical philosophy and applications to Lincoln-Douglas Debate

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Compiled by Victor Jih, Edited by Bob Hohman

Victory Briefs Presents . . .
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Introduction

Welcome to Victory Briefs' second compilation of moral and ethical philosophy! This book was written and researched mostly by the staff of the Victory Briefs Summer LD Institute, and the contents are largely the substance of our many lectures.

As you are reading this volume, you should keep several points in mind. First, you will quickly realize that this book is nothing like the value handbooks presented by other companies. This handbook, like the first volume, is collection of essays from different authors (with their own personal opinions) on ethical theory. Treat this volume as a book - read it from start to finish. You will have a difficult time using this book directly in rounds - it is meant to be used with prior preparation. Our mission is not to provide you with evidence, but rather a background in philosophy. To quote from the introduction of Value Handbook Volume I, "for those who are willing to use this as a textbook, to study it, to think about it, to work with it, you will find it very rewarding and interesting."

Remember that the essays in this book were written by authors with their own opinions - by no means the only ones, or the authoritative ones. On many topics, authoritative opinions don't exist! You should challenge everything you read here and come to your own conclusions.

I hope this handbook is useful. If you have any questions or suggestions, please feel free to visit us at www.victorybriefs.com or write us at Victory Briefs, 1144 Yale St. #3, Santa Monica, CA 90403.

Meet the Authors

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Liberty and Order
by Mark Price

As I sit here at my computer, contemplating the forthcoming discussion of liberty and law, I really have to wish for a more general topic. I don't think this has enough to write about, but I guess I'll try and muster ten or so pages on it. What also stinks about this topic is that no one has written anything on it, and I can't find anything in the library. Oh well.

Hmmm... where to start. In case you are a complete moron, you'll gather that I was being a wee bit facetious. Liberty versus law is one of the oldest conflicts in history (let alone debate history). I actually think its the topic to know the most about. If nothing else comes to mind on a particular resolution, you can always pick up a few judges with the old bleeding-heart appeal to liberty.

Perhaps the cornerstone of liberty is natural rights. In order to understand liberty and its value, one must first understand natural rights. Natural rights are inalienable rights of all human beings held by virtue of their humanity. The fact that I am a human entitles me to natural rights.

> **Norman Bowie and Robert Simon, The Individual and the Political Order,1986, p.50**
> " If we view persons as possessors of rights, we view them as agents, as makers of claims, as beings who are entitled to certain considerations whether or not others feel like going along.

The logical extension of this is that if one has a right to something, then someone else has an obligation to provide that "thing."

> **Norman Bowie and Robert Simon, The Individual and the Political Order, 1986, p.50**
> "Rights imply obligations in the sense that if some person has a right to something, some other persons are under an obligation either to provide it or at least not to interfere with the right barer's pursuit of it."

> **Alan Gerwith, Prof of Phil at University of Chicago in "Human Rights"**
> "For a person to have human rights, then, is for him to be in a position to make a morally justified stringent, effective demand on other persons that they not interfere with his having the necessary goods of action and that they also help him to attain these goods when he cannot do so by his own efforts."

So as not to infringe on anyone's writing of natural rights I'll briefly go over their significance to liberty. Simply stated they are necessary conditions to liberty. In fact it is often said that one has a natural right to liberty, but we'll hear more on that later.

We are not concerned with the whole of natural rights, though. We will concern ourselves only with this natural right to liberty. As we have seen, if we all have a natural right to liberty, then someone has an obligation to provide it to us. Who?

This is where we get even more specific. In debate we concern ourselves with political liberty. This is the liberty that, as human beings in a political framework, we guard so stringently. If we are speaking of political liberty, it would make sense to say that the government (the body politic) has the obligation to

provide our liberty. It is questionable whether one can provide liberty, so we should speak of obligation to a) refrain from harming our liberty and b) prevent others from harming our liberty.

Well, let's narrow it down a little further. In most of the literature there are two types of political liberty spoken of: **negative** and **positive** liberty.

> **Norman Bowie and Robert Simon, The Individual and the Political Order, 1987, p.144**
> "Negative Liberty concerns the absence of external constraints imposed by others. Positive liberty concerns self mastery or control over one's own fate."

> **Norman Bowie and Robert Simon, The Individual and the Political Order, 1987, p.144**
> "Negative liberty is the absence of constraint imposed by others. such liberty is embodied in the notion of civil liberties, which are barriers against interference by the state."

> **Isaiah Berlin, "Two Concepts of Liberty" in Four Essays on Liberty, 1969 p. 131**
> "The positive sense of the word liberty derives form the wish on the part of the individual to be his own master. I wish my life and decisions to depend on myself, not on external forces."

In short, *positive liberty is the freedom to do something, or do have something given to you, while negative liberty is the freedom not to be prevented from doing something.*

Now that we are (or at least should be) familiar with the concepts of liberty, we should examine its applications. How exactly does liberty fit into the social order?

> **John Stuart Mill, On Liberty, Currin V. Shield, ed. 1956 p.13**
> "The sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or mental is not a sufficient warrant."

This is known as the *harm principle*. Essentially, we cannot restrict the liberty of a person unless there is an overriding social concern. Mill takes a stringent view of liberty. He is a strong supporter of negative liberty. In effect, each person has a "sphere of inviability" that cannot be violated unless there is that social concern. Self regarding actions (actions which will only affect the self) cannot be infringed upon by the government. However, other regarding actions (those which can affect others) are fair game to restrictions.

With this we enter into the thesis of this paper. *What is the conflict between liberty and law? How should we resolve this conflict?*

The old social contract theory tells us that we must all sacrifice some liberty in order to have the bulk of it protected.

Political Theory, International Journal of Political Philosophy, "Berlin and the Division of Liberty" Aug 1980
"We must all then sacrifice liberty to liberty, offer up some of our freedom to act in order to secure the rest. To demand the increase of freedom must accordingly at some point threaten freedom itself: to win is to lose."

After we give up this liberty, society has the duty to protect it. But only by giving up some liberty can we truly have the ability to experience that liberty. Without social frameworks, it becomes impossible, to act upon our liberty.

Richard Taylor, Prof of Phil at Columbia in Freedom Anarchy and the Law, 1973
"It is thus through the legal order, the criminal law on one hand and the civil law in both aspects on the other, that human freedom becomes possible. Freedom is therefore possible only within a legal order."

Baron de Montisque, Free Government in the Making, A.T. Mason, ed. 1953, p.45
"We must continually present to our minds the difference between independence and liberty. Liberty is the right of doing whatever the laws permit; and if a citizen could do what they forbid, he would be no longer be possessed of liberty, because all his fellow citizens would have the same power."

Michael Walzer, Prof of Social Science, Princeton, Spheres of Justice, 1983
"Men do indeed have rights, but these do not follow from our common humanity; they follow from shared conceptions of social goods; they are local and particular in character."

It would seem as though we have a handy little conflict, then. What to do, what to do. What should the role of the state be in adjudicating these conflicts? Does the state only have a negative duty to see to it that peoples rights are not infringed upon, or does the state have to provide goods and services?

Bowie and Simon, The Individual and the Political Order, 1987 p. 166
"States may override the right to liberty only in order to protect and implement other rights and when such a policy has been arrived at by a just adjudication procedure."

Bowie and Simon, The Individual and the Political Order, 1987 p. 166
"By far the most common argument for the necessity of law is based on the psychology of human nature. This is a general agreement that people are political animals, and that they need social-political organizations for their protection and self realization. Such institutions are clearly advantageous. However, to be effective, institutions require rules and sometimes the rules work to the disadvantage of some individuals in the institution... Human nature requires that a state have a system of coercive rules to insure that its citizens obey the rules and regulations."

Jeffery H.Reiman, In Defense of Political Philosophy, 1972, p.29
"...political systems being from the assumption that some areas of behavior are too crucial to the mutual well being and survival of the community to be left to the conscience of its members... Hence, the starting point of a political system is the fallibility of conscience."

So, then, we all need institutions to protect our rights and we must give up some of our rights in order to maintain these institutions. The law serves as a check on human nature. It makes sure that one persons desires or needs do not pass into someone else's "sphere of justice."

However, people don't enter into a society to be worse off than they were before.

> **John Locke, Second Treatise of Government, ed.Thomas Peardon, 1952. sec13. chapt 9**
> "Though men when they enter into society give up the equality, liberty and executive power they had in the state of nature into the hands of society... yet it being only with an intention in every one the better to preserve himself, his liberty and property-- for no rational creature can be supposed to change his condition with an intention to be worse."

A person would not give up rights such that he be made more miserable than he once was. We should not advocate absolute authority, then. This is pretty obvious.

This, like the reflex (in the Duran Duran song), leaves us answered with a question mark. How much liberty does one give up? How much law is to much?

Actually the two can work together. In effect, the social institution checks the individual whims by the law and the citizen checks the government by use of his liberty. By continually scrutinizing the social order the citizen makes sure that his liberty is protected while maintain the order for all to enjoy their respective rights.

> **Bowie and Simon,The Individual and the Political Order, 1987,p.21**
> "One can acknowledge the authority of the state and retain one's autonomy as well if one does not follow the state's commands blindly or mechanically, if one is willing to override such commands when the situation warrants, and if one understands and accepts the reason supporting such acknowledgment."

People should not just blindly accept the laws. Government must be brought under criticism.

> **Henry David Thoreau, "Civil Disobedience" in A Yankee in Canada, ed.Hugo Bedau, 1969.p. 125**
> "Laws never made men a whit more just: and, by means of their respect for it, even the well disposed are daily made instruments of injustice. A common and natural result of an undue respect for law is that you might see a file of soldiers.. marching in admirable order over hill and dale to the wars, against their wills, ay, against their common sense and consciences."

If a state protects the rights of its citizens to a satisfactory degree then the citizens have an obligation to obey the laws of the government.

> **John Rawls A Theory of Justice, 1971 p.342-3**
> "This principle holds that a person is under an obligation to do his part as specified by the rules of an institution whenever he has voluntarily accepted the benefits of the scheme or has taken advantage of the opportunities it offers to advance his interests, provided that this institution is just of fair."

SUMMARY:

In the context of debate, many rounds will come down to the conflict of liberty versus law. How should you go about arguing this effectively?

That is a difficult question to answer without a prior knowledge of the topic. Yet there are a few points to keep in mind.

When one enters the social contract he agrees to give up certain rights in order to have the rest protected. Locke tells us that he doesn't give up so much as to make himself miserable. So if he gives up these rights to the common good, then the common good should provide for his own individual good. It won't (and ought not) do this directly. By keeping society together, we will all enjoy certain benefits. As JFK once remarked "A rising tide helps all ships."

I contend that society has only a negative duty toward its citizens. However Bowie and Simon (as well as most of the other quoted sources) disagree strongly with me on this point. It is impossible to require society to go out and positively provide for the well being to each of its citizens. Certainly, they are required to maintain a minimally decent standard of living (what this is, though, we're not exactly sure.). You should certainly do your own research on this point. Without reading at least this much of the literature debate is meaningless.

If that is the case, then the government must see to it that we don't do direct harm to one another. However, they should not monitor our every move to make sure that we don't screw up.

Moreover, once the person gives up his rights he doesn't just write the government a blank check. The citizen must continually scrutinize the government, always be on the lookout for potential abuse.

There you have it. On one side of the coin we have a citizen who wants as much liberty as possible. On the other side we have a government trying to protect everyone's rights. Needless to say that situation is a bit sticky. The outcome of the resolution depends on your ability to convince someone that in this particular situation (the resolution, NOT an example) that the conscience's check has revealed X and that means the government should slow down. Or, conversely, that the laws say Y and they are just laws, thus the citizen is wrong.

Without fail, though, the conflict will always be liberty or law. Which should win out? Is the jewel or the safe more precious? Hopefully, by the end of the round you will have made some progress in providing (albeit temporary) answers to some of the questions I have forwarded in this text.

Live long, rock hard, and HUNT THE WAMPUS!!!!

Rawls, Sandel, and Reiman: Social Justice Through the Eighties

by Jeremy Mallory

The name John Rawls should be at least recognizable to all debaters, many of whom marvel at the fact that one of the philosophers they quote is actually still alive. Strangely enough, all three of the people this article will focus on--John Rawls, Michael J. Sandel, and Jeffrey Reiman--are still alive. These three are defining the progress of philosophy into the next century through their different conceptions of social justice.

John Rawls is mostly known for his magnum opus *A Theory of Justice* published in 1971. This tome sets down one of the only comprehensive, complete answers to Plato's question "What is justice?" This is an important question to Rawls because he thinks justice is the key organizing force in society, the "first virtue of social institutions."[1] He immediately asserts the primacy of justice as a value, and designates the basic guideline "justice as fairness." He spends the rest of the book determining exactly what the principles of justice should be and how they apply to our lives. Rawls uses a unique approach to determine these principles of justice: the *Original Position* and the *Veil of Ignorance*.

Rawls wants to determine principles of justice that are totally objective, which means that nobody could have manipulated them to their advantage. He does this by setting up a hypothetical situation which he calls the Original Position. The Original Position consists of a group of people with a common task assigned to them: construct the principles of justice around which a society can be built. Since they will all be members of this society, they could conceivably use this opportunity to bias the rules of the society (its principles of justice) in their favor, against others. Rawls preempts this by placing one other stricture on the Original Position: the Veil of Ignorance. The Veil of Ignorance is the assumption that these hypothetical legislators know nothing specific about themselves which might make a difference in the theory of justice they arrive at. For example, they wouldn't know their race, health, age, strength, intelligence, position in society, sex, religion, wealth, or parentage. Without this knowledge, they, theoretically, will arrive at a totally objective and unbiased decision on the principles of justice that will underlie their society simply by legislating out of their own self-interest. For example, they would not agree to slavery as a principle of justice because they might end up as slaves once they enter society. After looking over a list of different alternatives, Rawls argues that they will reject other choices in favor of three particular principles of justice. First, all rights are to be distributed in such a way that the maximum system of rights belonging to any one individual is consistent with an equal and maximum system of rights for all other individuals. (Rough paraphrase.) Second, all goods and opportunities are to be distributed in such a way that the least advantaged individual receives the greatest advantage. Third, the first principle has lexical priority.

Huh?

The First Principle distributes rights. All of Rawls' jargon essentially boils down to giving each person rights to the point they interfere with somebody else's rights: "my rights end where yours begin." This closely echoes the substance behind Locke's social contract.

The Second Principle, more often called the Difference Principle, is the unique mark Rawls put on justice. This principle determines how goods are to be distributed fairly (clearly an important principle for any stable government...) Simply put, those who have the least ought to get the most out of any distributional

[1] Rawls, John. A Theory of Justice. Belknap Press: Cambridge, 1971. p. 3

scheme. This principle is the reason why many debaters incorrectly assume Rawls is a socialist or a communist (those terms have political connotations that really don't seem to fit Rawls). This principle, in isolation, seems quite simple to understand.

The larger complication comes with the concept of lexical priority. This simply means that the second principle ought not be upheld if it means violating the first principle at the same time: ensuring fair distribution of rights carries a higher obligation than ensuring fair distribution of goods. The other two principles seem fairly straightforward, even intuitively true. This is the principle that marks Rawls as a true liberal and also brings Rawls' philosophy into sharper focus. Many debaters forget that the most distinctive part of his philosophy, the Difference Principle, is still subsidiary to considerations of rights. For example, Rawls would not advocate "murdering someone, committing mayhem, breaching a promise, falsely imprisoning another, enslaving him, libeling him, and rendering him destitute" as Mortimer J. Adler contends, because all of these are, as Adler recognizes in the next sentence, "all violations of rights, not violations of the precept that equals should be treated equally."[1] What Adler fails to realize is that those violations of rights makes these action unjust, as the First Principle clearly states, even if they are for the greater social good, or even if they improve the lot of the worst off. Rawls would not defend Robin Hood: yes, Robin is upholding the Difference Principle, but at the cost of the First Principle (he is stealing and therefore violating rights). Rawls blueprint for finding these three principles of justice would set up a society governed by objective principles of justice that give a fair recognition and hierarchy of the rights of all the individuals in the society. The constructs of the Original Position and the Veil of Ignorance are important tools for understanding Rawls and the basis behind his thoughts.

In 1982 , Michael J. Sandel, a younger member of the philosophy department at Harvard, published a rebuttal to Rawls that leveled arguments against Rawls that he hasn't replied to yet. First, he challenges the primacy of justice. Second, he disputes the conclusion Rawls claims the people in the Original Position would draw. Third, he disputes the basic idea behind an Original Position.

Sandel's first major challenge is to the primacy of justice in the theories of John Rawls, and even extends the critiques to the obsession liberalism as a whole has with the idea of justice. The rights that Rawls deals with are the traditional conceptions of negative rights that keep people off of each others' backs: don't pry, don't ask, don't touch, don't help, just don't. Justice serves as a measuring stick to arbitrate any disputes between rights. Essentially, justice serves to strengthen these divisions between people. We don't know enough about others to be able to trust them, so we need justice as a safeguard to ensure that nobody screws around with us. "Where for Hume, we need justice because we do not love each other well enough, for Rawls we need justice because we cannot know each other well enough for even love to serve alone."[1] Justice essentially depends on people not trusting each other and becomes irrelevant once they do. Since justice is the organizing principle behind a society, the society must be of people who don't really trust each other, and lack of trust is a pretty strange basis for a society.

Sandel then challenges the conclusions reached in the Original Position by introducing the idea of bias. Rawls allows the individuals in the Original Position to know their identity, but not certain details of it. Sandel argues, however, that the ends individuals choose to pursue constitute an important part of their identity (Sandel terms these types of ends "constitutive ends"). Thus he must allow them to know some of their ends. Once that is allowed, however, the problem of gambling enters the picture. an individual in the original position could, in theory, gamble that they will not end up in a certain position and would thus skew the deliberations. For example, if they were willing to risk that they would be in the master class instead of the slave class, the individuals in the Original Position could, in theory, arrive at slavery as a

[2] Adler, Mortimer J. Six Great Ideas. Collier Publishing: New York, 1981. p. 188

[3] Sandel, Michael J. Liberalism and the Limits of Justice. Cambridge University Press: Cambridge, 1982. p. 172

principle of justice. If the Original Position does not preclude gambling, then most of the conclusions that Rawls draws, most notably the principles of justice themselves, become moot. Unfortunately, there is no reason to assume the people in the Original Position will not gamble, and Sandel's analysis on constituent ends gives us reason to believe that they will.

Finally, Sandel attacks the basic idea behind the Original Position on several different levels. First, Rawls assumes (as do all other social contract philosophers) that people exist, at some point or another, outside of a society (i.e.: humans are prepolitical). In Rawls, this assumption manifests itself in the Original Position (other contractarians call it the state of nature). In all cases, this prepolitical state is hypothetical: humans never have existed outside of a society. Sandel takes this to the next logical step: humans can never exist outside of a community. Humans are born as blank slates which their environment, their community writes on. Humans can only make sense of the world, can only understand anything through the lenses of what their community has already inscribed in their minds. This means that true individual identity doesn't exist: the individual identity is inseparable from the community. This idea has important implications for John Rawls and, by extrapolation, for all social contract theorists. These theorists have already been forced to admit that their theory, the social contract, is based on a hypothetical agreement made in a hypothetical state of nature, but now they have to face the idea that the state of nature they are talking about may also be nonsense. If humans cannot exist outside of a society, assuming they are prepolitical (as all social contracts must) literally makes no sense. In the past, they could assume humans were once prepolitical because the idea was, at least, conceivable. It made sense. With Sandel's argument, making that assumption no longer makes any sense and the basis of social contract theory disappears.

Sandel also has a more specific objection to Rawls' Original Position: the construct is, depending on the assumptions made, either too subjective or too objective to determine any functional principle of justice. On one hand, it fails to detach itself enough from the society (and, most importantly, its values) and assumes a lot about what the participants would care about. Rawls' emphasis on rights is a purely Western liberal notion. He assumes that all people are self-interested and look out only for themselves, and further that they all share some conception of basic goods. These are really big assumptions. Not all rational humans behind a hypothetical Veil of Ignorance would share these concerns, but unless they do, Rawls assumptions about how they would legislate are insupportable. On the other hand, maybe it achieves too much distance: the humans in the Original Position are too abstract to yield viable principles. Rawls tries to strip humans to their basic essence, but never specifies exactly what is left. One of the key principles the Veil of Ignorance doesn't remove is self-interest: these hypothetical legislators are motivated by a desire to maximize benefit and minimize risk. Unfortunately, that hardly gives any specific data on what society to choose. Further, there are simple human characteristics they might have, like stupidity, that would not be removed by the Veil of Ignorance. These characteristics pose two problems. If somebody shares in the prevalent human characteristic of stupidity, how are they going to abstract enough to be able to figure out the calculus Rawls uses to prove his principles would be adopted? Further, what is to prevent those salient characteristics from becoming an issue in the Original Position? Couldn't the legislators, for example, gang up on the stupid people?

Overall, Sandel poses some important challenges which Rawls has not yet answered, though rumor has it that a reply is in the works (as of July 1992). Jeffrey Reiman of American University, however, has published a defense of Rawls against Sandel's critiques. He conceives of justice not as fairness but as "reason's answer to subjugation".[1] Subjugation, in this case, would be one person asserting their will over another not because they should but because they can. This theory answers each of Sandel's objections, beginning with his argument with the primacy of justice.

[4] Reiman, Jeffrey. Justice and Modern Moral Philosophy. Yale University Press: New Haven, 1990. p. 1

Sandel's idea that justice is primarily divisive is based on the assumption that justice places only rights into a hierarchy. If justice exists to prevent subjugation, it must do much more. It becomes the measuring stick against which we must weigh all other values. Values become important when they motivate us to action, but become even more important when they are tools which allow us to interact with and persuade others. Unfortunately, if that persuasion is not overseen by some higher value specifically designed to prevent it, subjugation can occur: the person arguing with the most might instead of the most right will win. Some overarching standard must exist to weigh values in order to keep moral interaction between people from becoming subjugation. More importantly for Sandel, however, this fear of subjugation is inherent: all humans avoid it and regard it as bad. Thus they will not trust or love one another until some safeguard exists to allay the fear of subjugation. The trust and love upon which a community relies both depend on a system of justice which prevents the suspicion of subjugation from driving a wedge in the community. Thus, justice must retain its primacy as an answer to subjugation.

The answer to the gambling objections is a bit more lengthy. On one level, gambling can be excluded because it ruins the hypothetical test. Reiman freely acknowledges that the Original Position is indeed a hypothetical situation, a test: if a principle meets the self-interest of all individuals (for Reiman, this means eliminating the suspicion of possible subjugation), then it is just. Allowing gambling makes the test impossible: the suspicion of subjugation always exists as long as gambling is part of the context. Thus, since the Veil of Ignorance is the hypothetical vehicle which brings us to an understanding of how to eliminate the fear of subjugation, gambling must be written out of the Original Position and the results will not be skewed.

Sandel's critique of Rawls (and the entire social contract tradition) as assuming literal nonsense, a prepolitical human, receives much the same answer from Reiman: the entire idea of a social contract is a hypothetical test. It is a mistake to assume there is some actual document we signed as infants that compels our obedience: the social contract is a hypothetical test to see if the main condition for a society (freedom from the suspicion of subjugation) is met. Thus, it doesn't matter whether or not it makes sense: it is simply a hypothetical test that, admittedly, is not a possibility in reality but conceivable nonetheless in our minds.

The same answer, with a few modifications, also answers the dilemma that Sandel poses. If Reiman is right, the only assumption that this theory needs to make is that subjugation is bad. Nothing else. This seems like a reasonable assumption that is shared universally: it is wrong for might to triumph over right. Thus the Original Position does not make as many assumptions as Sandel claims it does. On the issue of abstraction, the idea of the Original Position as a hypothetical test again explains the response: these sorts of specifics don't matter as long as the Original Position is only a test for subjugation, which is all Reiman needs it to be. Further, the bare essence that is left, aversion to subjugation, is all that is necessary to reach the principles of justice that Reiman presents.

If justice is conceived of as reason's answer to subjugation, many of Sandel's critiques of Rawls' "justice as fairness" lose their impact. Reiman revises and extends Rawls' analysis and reasserts the primacy of justice as an arbiter of values. Examining the progress of social justice through the works of Rawls, Sandel and Reiman is a good way to see philosophy as it is really done by real live philosophers. All three of these writers are useful in Lincoln Douglas if their theories and their critiques of each other are well-understood. They are well worth reading since they will be defining the philosophical boundaries for the debate over social justice well through the next decade.

Hume
by Fred Carroll

There was a whole lotta shakin' goin' on in the mind of Mr.Hume, that's for sure. Given that it would be silly and pretentious to try to write an exhaustive summary or explanation of the entirety of Hume's philosophy, I'll do what I can to give an outline of some of the foundations. As I've said before, though, nothing can substitute original research and independent reading. This isn't gospel.

Hume started out as an empiricist with some ends in mind. He wanted to provide a geography of the human mind, and also to present a strictly logical critique of nonsense (or things not connected to the senses.) Hume begins by classifying reason into two types: relations of ideas and matters of fact. Relations of ideas are things based on concepts and true by definition, and not dependent upon the external world. An example would be that tattoos hurt. This relation is not dependent upon the external world, or even the existence of tattoos because the concept of a tattoo is that of a permanent ink impression poked into flesh. Matters of fact, on the other hand, do depend on existence and the external world, for the knowledge of matters of fact is not *a priori*. For example, while "tattoos hurt" is a relation of ideas, "I have tattoos" is a matter of fact based on observation rather than the concept of a tattoo.

Hume goes on to say that when we think, we have perceptions of two sorts: lively perceptions called impressions, and fainter perceptions called thoughts/ideas (all of which are copies of impressions.) Of impressions, there are two sorts: sensations which come from the outside, and reflections which are internal. These distinctions form the basis for Hume's map of the human mind, and serve also as the basis for his subsequent theories.

Another important idea of Hume's is that we cannot rely on intuition or demonstration for matters of fact. The only ways, then, that we can actually know any matters of fact are by: 1) immediate experience, 2) memory of an immediate experience, or 3) belief in cause and effect, which in turn sets the stage for Hume's famous critique of causality. Hume believes that getting general causal laws out of specific instances poses a problem of induction, which goes something like this:

1. *Anything beyond immediate experience requires cause and effect if we are to know it as a matter of fact, because we can only know of immediate experience or have memories of immediate experience.*
2. *We can only come to causal laws, then, through experience.*
3. *But, experience can't say A causes B because the chain of events is all in the past and we cannot logically induce generally from this.*
4. *So, we can never be in a position to know general connections, and therefore we cannot get past immediate experience.*

What all this means is that A can never demonstrate sufficient power to cause B. All we can get is a series of constant induction, but never actual causality. How Hume goes on to explain what we usually regard as causality is equally interesting. Hume says that people believe in causality out of expectation. That is, we're "hard wired" to react in certain ways through expectation regarding events. To Hume, causality is more an aspect of human behavior than a logical normative happening.

This idea of causality poses some interesting questions regarding freedom. If, as Hume contends, we're "hard wired" to react in certain ways based on expectation, then we've got some serious problems with free will. With only a little extension, this causality/"hard-wiring" notion seems to lend fairly directly to predeterminism. Hume says that while we're all predictable in our behavior, we cannot take away

people's responsibility for their actions. Instead, Hume says that the ways in which we play out our predictability and consequently our responsibilities points to distinct character traits. While causation is just predictability, being exempt from external restraints is freedom. Only in this freedom do our responsibilities play out as such character traits, allowing us to avoid predeterminism.

Applications:

Probably the most applicable part of Hume's philosophy is his theory of causality. This can be used to point out inductive fallacies in opponent's arguments, as well as to act as a building block for creative arguments for various resolutions. If you can batter an opponent's causal connections, you can easily advance your own points , so long as you're avoiding the easily binding double standard. Also, Hume's notions regarding freedom and free will can make for some good value debates based on responsibility (for instance, justice is better when executed responsibly). Also, those notions can be effective in critiquing external regulations on folks, because these kill freedom, which isn't even possible with such regulations because these influences would get us closer and closer to icky predeterminism. This should serve as a foundation for Hume's other arguments and help a bit in further readings of Hume.

Environmentalism
by Fred Carroll

Environmental theory is an area of modern philosophy which is highly applicable in LD debate not only due to the increasing number of resolutions that deal with the environment, but also because of its relevance in the areas of politics, economics, and ethics. The following is a brief survey of some of the arguments and ideas posed by the many branches of environmental theory.

Reformism:
"Reformism" (which is about as arbitrary as a title can get), is probably the most well-known branch of both the ecology movement and environmental philosophy. Reformism generally refers to a "work-within-the system" set of beliefs that can be associated with the liberal camp. Also referred to as "shallow ecology" by more hardcore environmental groups, reformist ecology stresses change toward more environmentally "sound" ways of thinking and acting within the system we've got, and thus differs from the other environmental camps yet to be discussed. The "greening" of society is the general goal of this very general field. I'll not go into this particular area in too much detail because Y'all probably are quite familiar with it and its general promotion of things like "green" products and gadgetry, recycling, animal protection, and resource conservation and the like. The general nature of this area makes it easier to define by telling what it's not, which the following discussion of the more radical fronts of ecological theory should do.

Deep Ecology:
"Earth First!ers, eco--heads, tree-huggers, eco-terrorists, eco-fascists, and radical environmentalists" are all terms used, with varying degrees of inaccuracy, to describe deep ecologists. Don't be fooled, though, deep ecologists aren't necessarily a liberal (using the modern political connotations) group of folks. Ned Ludd Books (a primary publisher and distributor of books on deep ecology) offers bumper stickers reading "Rednecks for Wilderness"--not a real liberal message.

The primary tenet of deep ecological thought is a concept called biocentrism. Biocentrism is the opposite of anthropocentrism--the belief that nature and life and everything should be centered on human beings. Biocentrism advocates that the biosphere itself, including ants, vegetation, mammals (including humans), fish, birds, and all other forms of life should be at the center of concerns, rather than placing humanity higher on the hierarchy of life. If you think about it, this is a pretty radical notion--that humans have no more intrinsic worth than worms or bees--that deals a good left hook to the jaw of Western thought for the last few thousand years. It's not a new idea either, having been present in the beliefs of many Native American and Asian schools of thought, not to mention the other tribal societies that I don't know much about. Biocentrism can also, if you watch your diction, make for a pretty good argument. I mean, why, logically, why should our thumbs make us superior to other life forms? Thankfully, there's also a bunch of evidence to support biocentric arguments (see reading list.)

This belief in biocentrism contributes significantly to a field called "conservation biology". Conservation biology is a primarily scientific approach directed toward protecting all forms of life and demonstrating the interrelatedness of different life forms within various ecosystems. It is important to note, though, that not all conservation biology falls under deep ecology or vice versa, although the two often overlap. Conservation biology argues for the preservation of wildlands, critters, and Earth in general by stressing the need for biodiversity rather than for the more anthropocentric reasons such as nice scenery and swell picnic places. In this sense, much of the evidence brought forth in the field of conservation biology argues very effectively for deep ecology.

Another important aspect of deep ecology is the tendency of its advocates to believe in direct action tactics. Espousing the belief that reformism is slow and of limited effectiveness, many deep ecologists support the idea that by directly engaging those who would harm the earth, more decisive progress can be made in protecting the earth. It is on this front that deep ecologists face most of their criticism. Obviously, direct action has many forms ranging from legal, peaceful protest to less legal and peaceful forms of monkeywrenching. Using tactics such as tree-spiking and equipment modification and disassembly has led some critics to use phrases such as "eco-terrorists" or "eco-fascists" to describe environmental activists. Keep in mind, though, that it is logically fallacious to assume that all deep ecologists spike trees or modify equipment. Certainly the theories of deep ecology (primarily biocentrism) have little direct association with the various means of direct action. Also keep in mind that even the more radical forms of monkeywrenching have justifications and arguments in their defense. (see reading list) Don't let poorly reasoned sensationalist arguments discredit either the broader theories of deep ecology or the sometimes advocated actions that may be associated with them.

Another idea commonly associated with deep ecology is bioregionalism. Bioregionalism, through examination of scientific evidence, contends that areas can be broken down into different bioregions based on the ecology of the area. Bioregionalists use this research to argue that such bioregions should be recognized and treated as such, which, in turn, leads to a variety of conclusions, the most popular of which seems to be that we should operate (and perhaps even re-form communities) around such bioregions so as to act in accordance with, rather than in opposition to, nature.

Applying these aspects of thought to the status quo, deep ecologists often argue in favor of establishing wilderness and wildlife preserves to protect and preserve the earth. On economic or environmental resolutions those ideas can be used in various forms. Practically, you can argue for preservation and/or conservation using the ideas of bioregionalism and biocentrism. Theoretically, arguments regarding the intrinsic value of life can be used in opposition to the hierarchical anthropocentric arguments which give non-human life only extrinsic value. Either way, an actual plethora of evidence can be found supporting a wide variety of arguments under the deep ecology banner. The above is at best a summary of some of the points. A good reading list of texts on deep ecology would include the following (in no particular order.)

Erlich, Paul. The Machinery of Nature, Simon and Schuster 1986.
Soule, Michael. Conservation Biology, Sinauer Associates 1986.
Manes, Christopeher. Green Rage. Little Brown 1990
Mills, Stephanie. What Ever Happened to Ecology?. Sierra Club Books. 1989
Leopold, Aldo. A Sand County Almanac. Oxford U. Press 1987 (1949)
Ehrenfeld, David. The Arrogance of Humanism. Oxford U. Press 1978
Fox, Warwick. Toward a Transpersonal Ecology. Shambhala Publications 1991
Sessions and Devall (George and Bill). Deep Ecology. Peregrine Smith 1985
Naess, Arne. Ecology, Community and Lifestyle. Cambridge U. Press 1989
Sale, Kirkpatrick. Dwellers in the Land. New Society Publishers 1991 (1985)
Wolke, Howie. Wilderness on the Rocks. Ned Ludd Books 1992
Foreman, Dave (ed,) Ecodefense 1987

Social Ecology:

Social Ecology is a field of ecology and politics formalized and primarily advocated by anarchist philosopher Murray Bookchin. Social ecology is similar to deep ecology in many of the aforementioned aspects, but it also differs in key ways.

Politically, social ecology advocates decentralization of government, with the power switched from national agglomerations to "libertarian municipalities", which because of their small size are able to

operate in a sense of direct democracy. Bookchin advocates that these municipalities be based on bioregions. Unlike deep ecology, however, social ecology is emphatically not opposed to technology in general, although Bookchin does condemn nuclear weapons and biochemical arms (and the like) as purely evil.

Another key point of difference between deep and social ecology is that while some deep ecologists make misanthropic remarks or even advocate misanthropy, social ecology strongly opposes such anti-human sentiments. Also, instead of wholeheartedly accepting the idea of biocentricity, Bookchin suggests that any sort of hierarchy, whether humans or non-humans hold the top seat, leads to oppression and negative social relations as well as harm to the ecology. Bookchin stresses that humans must act as a part of nature, neither superior to nor of lesser importance than non-human life.

This opposition to hierarchy in nature is carried over in social ecology to an overall opposition to hierarchy in all of its nasty forms. Thus, Bookchin advocates a kind of social eco-anarchism where all hierarchy, whether it be based upon race, gender, religion, or species is eliminated to be replaced by voluntary cooperation. Bookchin also points out that an integral part of social ecology is its strict difference from any sort of eco-mysticism. Any group of thought which uses deities (whether Christian, pagan, or whatever) to glorify the earth is still based on hierarchy by placing such mystical whatevers above tangible life. The main tenet of social ecology, as I hope is clear by now, is opposition to any sort of hierarchy. Bookchin also goes into other topics such as problems with cities and economic scarcity in his many works, a partial list of which follows.

--*ALL TITLES BY MURRAY BOOKCHIN*--

Post Scarcity Anarchism. South End Press 1986.
Defending the Earth (dialogue with Earth First! co-founder Dave Foreman) South End Press 1986
Remaking Society. South End Press 1991
The Ecology of Freedom. South End Press 1992 (re-issue)

Important Note:

Y'all are probably thinking by now that this is just CEDA bs, and if you run it as such, you're absolutely right. Using buzz words like "deep ecology" in rounds is a good way to lose. However, by incorporating some the ideas presented here and discovered in your reading, you can build strong value-oriented arguments from these ideas which can certainly be used on environmental or economic resolutions. Don't be dumb, don't run plans or disads, but use value structures and come up with creative value arguments. Also, I am more than willing, upon request, to send evidence and ideas to folks, or explain applications if you can't figure something out. Send questions and/or requests to FRED CARROLL, 1600 Grand Ave., St. Paul, MN. 55105-1899. Don't get me wrong, I won't do your research for you, but I will be willing to help you find stuff and apply it if you'd like.

Teleology Verses Deontology
by Thomas Marlowe

If you talk to someone who has never done debate but knows a lot about philosophy, they will probably tell you that teleology verses deontology basically boils down to the debate between Aristotle and Kant; some will take it even further back and say it is the debate between Aristotle and Plato.

Basically, *teleology* says that everything in the universe - every action, every object - has a cause or a set of causes and that everything is guided by a supreme force in the universe towards its ultimate state. However, the teleology that people talk about in the debate round or at debate camps is *the philosophy of ends*; in other words, debaters use the term "teleology" as synonymous with the term "consequentalism."

This isn't enough of a definition, though. Newer debaters only have a rough idea of what consequentalism is. Consequentalism basically says that you judge whether an act is moral/just based upon the consequences (as opposed to the will of the person making the action or the means used to achieve the end). For example, it would be all right to kill someone like Hitler in 1941 in order to save lives down the road. It would be unjust to simply kill someone, but it would be justified if that person would kill many others if you didn't stop them right away. Now most people want to be really careful, because consequentalism taken to the extreme, as with *everything* taken to the extreme, is insidiously evil. No one wants to argue the Machiavellian principle "the ends justify the means" in all circumstances.

Joseph Fletcher Situation Ethics p. 121-122.
"It should be plainly apparent not any old end will justify any old means. We all assume that some ends will justify some means. Being pragmatic, he always asks the price and supposes that in theory and in practice everything has its price. Even a 'pearl of great price' - whatever it is - might be sold for love's sake if the situation calls for it."

So, most people who argue teleology in debate circles say either one of two things:

1. *that the ends are generally more important than the means when evaluating the justice/morality of an action (means should be taken into account, but not weighed as heavily)*
2. *that if you take into account all of the ends, the means become relatively irrelevant.*

It would seem that the definition of Deontology would be the exact opposite, right? Well, yes, but Deontology includes a little more. As far as I figure, there is more than simply the ends and the means to an action. There is also the intent. Deontology is the philosophy that says either

1. *the means are more important than the ends in deciding whether an action is just/moral*
2. *the intent must be considered more important than the ends in deciding the justice/morality of an action.*

Of course, there are some screwy people who will try to argue that **only** the intent is important or **only** the means are important. That is a little strange ... but Kant tries to do it. He writes:

> **Immanuel Kant "Foundations of the Metaphysics of Morals" (from The European Philosophers from Descartes to Nietzsche p. 471)**
> "An action done from duty derives its moral worth, not from the purpose which is to be attained by it, but from the maxim by which it is determined. Therefore, the action does not depend on the realization of its objective, but merely on the principle of volition by which the action has taken place, without regard to any object of desire ..."

An example that you might want to use is suppose I saw a person who was dying on the street, so I tried CPR on him. But, I actually end up killing him using the CPR (not because I misuse the CPR, but because I didn't know that he was allergic to bees and had been stung earlier). Well, I couldn't have possibly known, right? If we judged my action based upon the results, you would say that I should go to jail for killing the person; but that doesn't seem right, 'cause I was trying to save his life. Intentions matter. In fact, **only** the intentions matter, right?

Consider another scenario: The Mafia is offering a reward for the killing of this big boss named Stanley. Anders and Michael are competing for the money. Michael shoots to kill Stanley, but messes up and accidentally kills Anders, stopping Anders from shooting Stanley. So, Michael, who *intended* to kill Stanley, ends up saving Stanley's life. If we judged upon the ends of the action, we would have to say that Michael is a morally virtuous fellow for accidentally saving Stanley's life. That cannot be! He was trying to KILL Stanley just a moment ago. Michael's action, regardless of the result, has to be considered immoral because of the intent behind it. Immanuel Kant says that this intent (he calls it "the good will") is important in and of itself. It isn't important because it achieves something; it has moral worth on its own. Kant explains:

> **Immanuel Kant "Foundations of the Metaphysics of Morals" (from Ethical Theories by A. Melden, p. 323)**
> "Reason's proper function must be to produce a will good in itself and not one good merely as a means."

So basically, what decides whether something is moral or not? The will, nothing else. Is it immoral for an animal to eat a person? Well, it certainly would be bad, but how could it be considered immoral? Morality has to do with the intentions of the person, which is why we sometimes say that children and mentally challenged people (mentally ill or mentally retarded) are not morally culpable for their actions. Kant says that the only thing that has any moral worth - the only standard by which we can determine if something is moral or not - is if a Good Will is present:

> **Immanuel Kant "Foundations of the Metaphysics of Morals" (from The European Philosophers from Descartes to Nietzsche p. 470)**
> "Nothing can possibly be conceived in the world, or even out of it, which can be called good without qualification, except a GOOD WILL. Intelligence, wit, judgment, and the other talents of the mind, however they may be named ... are undoubtedly good and desirable in many respects. But these gifts of nature may also become extremely bad and mischievous if the will ... is not good."

Sure, we let people go who are clearly insane, but what about the people who are just stupid and should have known better? Take for instance the doctor who accidentally botches an operation and we later find out the reason why was because he didn't pay much attention in med school; he was too busy drinking during med school. Even though he really had the best intent and genuinely intended to save that person's life, we say that he is guilty of an immoral transgression and that he is morally culpable. But that doesn't agree with Kant.

Well, Bernard Gert in his book Morality and John Stuart Mill in Utilitarianism, explain that we need to have a balance between the strict ends teleology and the strict means/intent deontology. We have to take into account the ends that can be expected by a rational person. So, for example, if a person moves his family out to Florida, and they all get killed by a hurricane, we cannot consider that an immoral action on his part because he wouldn't have known any better. However, if he had seen on the weather reports that a hurricane was passing through the area and he knew their lives were at stake, he is doing an immoral action by risking their lives unnecessarily. So, according to Gert and Mill, we judge an action based upon the intent and the foreseeable consequences.

Well, I could stop there, because that's the view I basically hold. In my opinion, intent is important, but you have to consider what ends are logical when making your action. Looking at ends only (or even primarily) causes people to do things like the Watergate Dealie. Looking at means only leads to some pretty stupid propositions of morality. But, let's look at some of them and examine some stock debate arguments for ends/means.

Means are proximate ends. Basically this argues that the ends do not always justify the means. Means become ends in themselves, most of the time. If you are going to have a war in order to pursue a freer society, that society you will be forming will have built into its foundation that killing is ok in certain circumstances. Every means you use is a precedent of what actions are considered morally justified. If you rob from the rich and give to the poor, the means you use will create its own ends. Perhaps your method of taxation will cause the rich to leave the country. Basically, this argument says that there are other ends to look at that aren't immediately obvious but go hand in hand with the means you are using.

Joseph Fletcher Situation Ethics p. 122.
"We should not forget Thomas Aquinas's warning that means are proximate ends, and that therefore the means we employ will enter into the end sought and reached, just as the flour and milk and raisins we use enter into the cake we bake."

Means are concrete, yet ends are unknowable. This is a dumb argument which is easily answered by Bernard Gert. But, when confronted with people who have not heard of Bernard Gert and haven't read Mill that scrutinously, this is a good argument against people arguing teleology. Teleology requires that we argue whether an action is moral/just based upon the end result. The simple fact is, we don't always know what the end result is going to be; we can only guess. In fact, we **rarely** know what the end result will be, so teleology is a flawed measuring-stick of morality. Now if someone makes the analogy to a situation where the ends are known - say jumping off a building - just bring up the fact that somewhere around 95% of the actions we are evaluating are not that simple .... the ends are **not** known. The only thing that is known and is absolute is the means you are using.

Means analysis leads to moral paralysis. Oooh, that sounds good rolling off of the tongue, eh? We can thank Gretchen Crosby and Anoop Mishra for this argument. Basically, if you insist that every means be moral, you may end up stuck in an immoral situation. Consider the scenario of a prisoner of war who is kept and tortured and forced to torture other prisoners. Now if this person did the most obvious thing - to kill his oppressor -he would be doing an immoral action, right? I mean it is immoral to kill someone, right? (It is always immoral; it's just that sometimes we say that what is immoral is morally justified in a certain circumstance. Morally justified means that you are justified in breaking a moral rule in certain situations.) So, to the person arguing deontology, the POW has to sit and torture other inmates and be tortured himself. Now, just torturing others is immoral and allowing oneself to be tortured is immoral, so to the Deontologist, this poor guy is stuck; he is trapped in immorality. This moral paralysis is solved by

using teleology by saying that there would be less immorality if he were to kill his torturer and consider only the ends of the actions.

In a nutshell, here are the arguments:

For Deontology:

1. *Making sure that your means are just/moral ensures that you are not doing direct evil. (in other words, if you use teleology as a standard, you **know** that some day you will do an action that you **know** is evil.)*
2. *If you don't practice deontology, you set up the precedent of immorality and injustice*
3. *Means are concrete; ends are unknowable.*
4. *Means are proximate ends.*

For Teleology:

1. *Kant was stupid and now he's dead.*
2. *Avoid long-run immorality*
3. *Means analysis = moral paralysis*
4. *Justice is more clearly defined by teleology*

I think the best thing for a debater to do in considering philosophy and argumentation is to look for fallacies ... for example, the false dilemma. The false dilemma pits two things against each other that either aren't in conflict or are just bogus issues. I think that teleology verses deontology is a false dilemma. In fact, I think that if you sit down and thing about it, you will realize that there is truly no such thing as an end or a means. Every means is an end, every end is a means, depending on the time scale. Consider war in the pursuit of democracy. War is the means, right? Democracy is the ends? Well, is democracy really an end? I mean, why do we have democracy? Because it enhances the political freedom and equality of the individuals of the individuals involved, right? Well then, War is a means and democracy is a means ... liberty and equality are the ends, right? Well, why do we want liberty and equality, anyway? I mean, these things aren't good in and of themselves are they? Consider the case where everyone has 100% liberty; it's called anarchy. Consider which scenario is preferable: you both equally make $10 per year or this guy makes $2 million and you only make $1.5 million per year. Equality isn't everything. Why do we want to boost liberty and equality? Because it increases societal pleasure (utilitarianism) or because it increases societal happiness (Aristotle). So war is a means, democracy is a means, liberty and equality is a means, pleasure and happiness are the only ends? Well, as far as I have taken these thoughts, I can only see that there are a few ends: happiness, pleasure, truth, virtue, and love. Oh, and the big "Because". You ask someone why they did an action and ask why again for the next thing and so on until you get the great "Because, @!#?$#! ... now leave me alone."

Using Philosophy
by Jason Ingram

Most beginning debaters misapply philosophers. In fact, many who deem themselves experienced debaters misuse both evidence and philosophy. This section applies to both groups, but is intended mainly to provide guidance for the novice.

Evidence (authoritative opinion) should be used only for ethos or for rhetorical value. Some areas require evidence to provide credibility, and a particularly eloquent expression of an idea rarely hurts (the only real potential for harm lies in quoting someone whom either your judge hates or your opponent can appropriate). Ideas should be the round's focus, and should stand on their own.

The first step in using philosophers (philosophers meaning, for the purpose of this article and in the context of Lincoln-Douglas debate, anyone with authoritative opinion) is research. Prior to even general research, every team member should brainstorm. Then, each should perform general topic research to gain familiarity with issues. The third step in the research process is focusing on several ideas for each side of the resolution. These ideas should comprise both the affirmative's and negative's value, criteria, and set of contentions. After the skeleton for each case has been constructed, detailed and specific research is called for. Once this information has been acquired and digested, the time for final argument construction is at hand.

Steps for Researching Philosophy
1. *Brainstorm on topic ideas*
2. *Do general research to familiarize yourself*
3. *Focus on important ideas, particularly affirmative/negative values*
4. *Do specific philosophical research*
5. *Construct case skeletons*

In case construction, arguments should stand and be supported on their own merits. A good test for this is eradicating all mention of and evidence quoted from philosopher x and determining whether the given argument is still sound. A corollary to this is that arguments should be explained and diagrammed without `name-dropping.' Several off-the cuff reasons for presenting evidence as if the quoted philosopher supports the debater rather than vice-versa are as follows:

1. *Philosophers rarely write about specific debate resolutions and thus must be applied specifically by debaters. This entails (gasp) analysis, and that analysis is more credible when presented from a consistent perspective (as authors must be applied to resolutions, consistent advocacy is more easily provided by debaters).*
2. *Every philosophical system has critiques, and it is far easier to both respond to and avoid these critiques if philosopher x is support for rather than supported by the affirmative.*
3. *Rhetoric: it sounds much better when debaters present their own arguments and at least appear to do their own thinking.*

Accordingly, arguments in rounds should be the result of independent (informed and well-researched, but still independent) thought supported by evidence, rather than any permutation of the reverse.

A final word of caution: keep your arguments sparse. One need not include idea y simply because philosopher x mentions it, and extraneous ideas do distract from the resolution. `Keep it sparse and simple' applies to both argumentation and the use of quotations. Debate is, or at least should be, a communicative event that stresses individual analysis. To that extent, evidence should be a persuasive tool rather than an end in itself.

Justice to (the) Victor
by Jason Ciarochi

What is justice?
John Rawls said it best when he said, "Justice is the first virtue of social institutions." Justice is the reason we have a government. We desire it because it safeguards all other values; as soon as we have justice, we can have life, liberty, and the pursuit of happiness. As Plato said, "Justice is giving each man his due." Inherently, man is due his rights, which only Justice can provide. Justice is synonymous with fairness -- to guarantee equal distribution of rights. That is why justice is essential to every society. Before society, man was in the state of nature where the only guarantee of security could be found in carrying a big stick and bonking people on the head. Justice is what guarantees that society will be more desirable than the state of nature, for as soon as any society is so unjust that the state of nature seems attractive (and people would rather take their chances of being bonked on the head!) then that society would dissolve and cease to exist. Because justice ensures equality, every society continues to function; it guarantees that someone else's rights are only as important as yours.

Why should you always run justice?

Ultimately, every good Lincoln/Douglas debate resolution asks a question of justice. If you look into any legitimate Lincoln/Douglas resolution you will find it asks a question similar to "Which action is more just, Is this action just, or which action promotes justice?" Justice is a really good value to run because the whole purpose of justice is to settle conflicts. Justice should answer questions of individual rights or societal duties. This next quote should be one everyone has heard out of context: according to Lucilius A.Emery, "Justice is the equilibrium between the full freedom of the individual and the restrictions thereon necessary for the safety of society." What this tells us is that justice attempts to maximize the individual and society by balancing each man's rights and security- the ideal arbitrator for any conflict! The funny thing about this quote is that hardly anyone knows who Emery was (yes, he is dead!) - he wasn't another lonely philosopher, he was a Justice for the Supreme Court of Maine in the early part of the century. Another funny thing is that the above quote is not really his definition of justice; it's just a characteristic; Emery's definition is that "Justice is the according to everyone his right, and that right is such freedom of action in gratifying one's desires as can be exercised in harmony like freedom by others." This quote is not used that often, simply because it is annoying, long, and basically falls into the same principle as the other one.

How to Apply Justice

Now that we have established that justice deals with/ or attempts to deal with every debate resolution, let's say the topic is resolved: that the government ought to restrict driving privileges of citizens over the age of 50. Your value would obviously be one of justice. You then explain how it is inherent in the resolution because the government ought to only do actions which provide for justice (you can use one of the 2,000,000 cards in the handbook). Then you quote Adler that "Justice is the only unlimited good" (because it can never be taken to the extreme, it is always desirable, to quote Adler again, "you can have too much freedom, but you can never have too much justice"). That quote has established the value hierarchy in the round, that yours is always supreme. If your opponent was running dignity, you would explain how dignity can only exist once justice is maintained, at that point, the judge should consider the achievement of justice and your voting criterion as the most important thing in the round.

How to Achieve Justice

Justice is a neat idea and all, but without a way to achieve it (a believable voting criteria) your head is just stuck in the clouds. Your voting criteria for justice needs three characteristics. The first is that it needs a clear link to justice (obviously- if your criteria was leisure and you couldn't logically show how laying out in the sun achieves societal justice, no matter how good you make justice look, you won't win through your criteria of leisure-unless it is due to judge error). The second is that it needs a clear link to the resolution. For example, we all know that equality links to justice, but if you were debating the topic resolved: that Americans overemphasize convenience at the expense of their natural environment, proving equality wouldn't necessarily prove the resolution true or false. The third (and most important) characteristic is that your criteria is more winnable on your side of the resolution. For example, if you were debating resolved: that paternalism is a good governmental trend, your affirmative criterion would not be self actualization or individual development.

Different types of justice? Hey, wait a minute... Are you trying to pull a fast one?

Yes, there are many different types of justice... Just when you thought it was safe to debate, they did it again (they made another theory, Ugh). This is actually the reason there are so many different political philosophers. Each one is absolutely sure that following his social contract is the way to achieve the same common goal...justice. These are usually where the best debate rounds come from-when two debater have conflicting notions of how to achieve justice and they both can achieve it their way with their side of the resolution- it's almost as if Hobbes and Locke are debating different sides of the resolution. The basic type of conflict in justice is the individual/societal conflict. You should always be able to decide what position of justice you are taking and be able to answer these next few questions:

Is justice for the individual or for society?

Are justice and the social contract lost and broken with only one violation? Does that mean you could be just if you violated someone's rights?

Are you valuing justice in the means or in the ends?

Basically justice (when run correctly) has one of two positions.

The first position: the "I am more important than the world position."

This position insists that justice exists for individual rights first and foremost. This is very logical because we entered society for justice and we should leave or change society if it is unjust. With this sort of position the negative can run the standard that since even one violation is unjust, all he has to do is show one to win (which can be slightly abusive). This type of justice is called deontological justice - justice in the means. It says that if you have to kill one person for world peace that you shouldn't do it because it's unjust. Basically, it is a two wrongs don't make a right type of set up. There are several problems with this type of justice. The first is that although individual rights are important, if you keep hesitating on little violations of rights, you will never achieve long term justice. Basically, in a conflict situation, you have to give up a little to get a lot. The second problem with this philosophy is that it is unrealistic. Sure, individual rights are cool and everything, but does the social contract really dissolve and is justice really lost with one unjust act? Last week I got a speeding ticket and society didn't revert back to the state of nature. As a matter of fact, the only time that I got bonked on the head was when I told my dad about the ticket. Another problem with this philosophy is the idea of justice and equality. An injustice to one person within society won't necessarily undermine the idea of justice. Sure it's bad to

harm someone, but if you are prioritizing one person's rights above society, then we aren't treating all rights equally.

Another approach to defeat this type of justice is to show how abusive their standard is, simply because there is no alternative that can possibly meet it. The negative can effectively counter this by saying that he only has to show violations of justice as opposed to giving a counter-standard of something more just, since true justice is not sacrificial. This sort of debate would boil down to whether the resolution is comparative or superlative. For example, if you are debating resolved: that affirmative action programs are justified, then the negative only needs to show violations of justice. If, however, you're debating resolved: that a just social order ought to worship Madonna over Rosanne, then the negative would have to show that worshipping Rosanne is actually more just. (Needless to say, this is an extremely heavy burden for the negative to bear. It would be difficult to measure the results.)

The second position: "Who cares if I cheated on the test, I got an "A" didn't I?" position.

This position is much more realistic and much more practical. This is the position that justice exists for the society. This is basically true, you can only protect each individual by trying to protect society. This philosophy shares the view that Hobbes had on societal justice. The other position claimed that because we enter society for justice and protection of rights, if an injustice occurs, justice is lost until society is changed. This position offers a different social contract theory. It starts by saying that the state of nature isn't a very nice place (especially to take a date). In nature all of the Einstein's are getting bonked on their heads and are continually duped by the bullies (doesn't the phrase 'state of nature' remind you of cavemen?). Indeed, in this theory the state of nature is detested-mainly because intelligence and pacifism aren't quite appreciated yet. This philosophy says that because the state of nature is so bad, it is O.K. to tolerate a few injustices in society. It justifies this firstly because of the idea of progress- society will eventually change to be more just and secondly on the idea of long term justice- they will certainly achieve justice in the end if they are patient. This philosophy is neat because although it may use unscrupulous methods, it actually achieves justice. However, there are a few objections to this belief, too. The first is that true justice is lost as soon as it loses concern for one individual. This theory of justice could be used to justify slavery by saving it was a necessary sacrifice to unite America. It also would assume that the civil rights marches were foolish - it rationalizes present day injustices and basically procrastinates and says they will be solved in the future; and whenever this form of justice would act, it would probably take an unjust means. That's the second major conflict. Do two wrongs ever make a right (although I know that three lefts make a right!) ? Can you ever justify sacrificing even one person? What if you were that person? Because this justice always looks at the ends - long term justice - it ignores the means. The third objection comes from the social contract theory; this kind of justice believes that justice is achieved as long as society is better than the state of nature. This objection says that although an unjust action doesn't destroy society, that doesn't prove that particular action was right.

An essential characteristic about justice...

Objective - easily, clearly, and fairly defined, without prejudice. Subjective means unclear, selfish; a subjective decision is one that would vary between different people. For example, whether abortion is moral is a subjective decision, while the fact that murder is wrong is objective.

Why did I bother defining those? Because justice must always be objective in order to be fair and treat everyone's rights equally. If laws were subjective, they would be changing and fickle without notice. For example, in our society we have outlawed *ex post facto* laws to guarantee that our laws are objective so people can't be punished for doing something that was legal in the past but illegal now. We entered society for objective laws and objective punishments - we wanted a clear set of rules that everyone followed because the state of nature had subjective laws - I could be killed (or bonked on the head) for

drinking out of the wrong watering hole! A good application of this objectivity argument can be seen on the topic resolved: that the deliberate use of deadly force is justified as a response to physical abuse. The negative could argue (quite effectively) that killing someone for abusing someone was unjust because it was a subjective decision - it could be one made only in that person's best interest, but regardless, it allowed the person to make subjective or fickle/changing value judgments regarding human life; which is obviously quite unjust...

Morality and justice, what's the difference?

Asking that question is like asking a Texan what's the difference between Pace picante sauce and another hot sauce from New Jersey. Don't ever let an opponent running morality say, "Morality, justice- what's the difference, you say tomato, I say tomahto..." Morality is basically an individual standard and code of ethics while justice is a societal goal. Justice is fairness, morality is what is ethically right. An action could be immoral, but still be just - for example, killing a mugger who puts a gun to your head isn't morally right, but it could be necessary and just. Justice is the way society will make laws to at least make sure that if people choose to act immorally (take drugs, lie, etc.,) that they won't harm other's rights (murder, theft) - A good question of the authority of the government is: Is it just for the government to legislate morality? Most people believe no, unless it is necessary to protect others rights. *(Editors note: see article on Enforcement of Morality)*

O.K. just a few more things about justice...

Don't be fooled by people running justice in disguise; in cross examination, clarify exactly if their value does or doesn't have just characteristics- if someone is running this as their value - the moral just fair social order with benevolence towards non autonomous individual rights - don't be fooled by the long words - check how they are running it and how they are applying it; 9 times out of 10, it's still justice.

Think about how your opponent is running justice - quite often they will run a standard that tries to amalgamate (combine) the two above types of justice - and quite often it contradicts. Always ask what they value in conflicts (between their different standards; for example, you can't always have a just means and a just ends in a conflict - which do you value?) until you can show an inconsistency or a fallacy of logic.

Make sure your opponent is applying justice correctly. There is a huge difference between world and societal justice. Most debate resolutions only imply societal justice - remember the first obligation of the government is always its own justice. Why would the United States ever be obligated to the social compact before the social contract, etc.?

A quote from James Malios to me at the Montgomery Bell Academy round robin (and then again at the Stanford round robin, for the sake of good taste). "Justice for who, Jason?"

And now, without further ado... Presenting the world famous Justice block... (arguments for justice as a value/ voting criteria)

1. *Justice encompasses all other values.*

> Jason Ciarochi (This analysis is true because justice is necessary to safeguard all other ideals. The ultimate goal of every individual is to be just, to live in a secure environment). (If you still don't know why justice is at the top of the value hierarchy, read Adler!)

2. "Justice is the only unlimited good."

Mortimer J. Adler

3. "Justice is the equilibrium between the full freedom of the individual and the restrictions thereon necessary for the safety of society."

Lucilius A. Emery (You could use this card to say that justice maximizes the individual and society. You could also use this card to show that certain limitations would or would not upset the equilibrium of rights/security necessary to achieve justice.)

4. "There is no justified sacrifice of some of us for others."

Robert Nozick (this is a great card to use on the negative of a superlative resolution - on the idea that justice is not sacrificial and that there only has to be one violation of justice to be unjust - it's a tough case to beat.)

5. "Justice is giving each man his due."

Plato (each man is due his natural rights...)

6. Justice is the equilibrium between liberty and equality.
Mortimer J. Adler (this is his theory of justice)

7. "Justice is the first virtue of social institutions."

John Rawls (society's first obligation is to justice)

8. "Limits under just restraints will have no loss to morality."

Mortimer J. Adler

9. "Justice is the end of civil government."

James Madison (it is the ultimate goal of society)

10. "Justice is to be sought rather than used; it is not a means, it is an end."

Raymond Matein

11. "Institutions, no matter how efficient and well-arranged, must be reformed or abolished if they are unjust."

John Rawls (justice is not sacrificial - you can't be 70% just; justice demands progress, etc.)

12. "Being the first virtues of human activities, truth and justice are uncompromising."

John Rawls

13. "You can have too much freedom, but you can never have too much justice."

Mortimer J. Adler (same as #2)

14. "Justice denies that a loss of freedom of some is made right by a greater good shared by others."

John Rawls (he likes justice in the means, deontological justice)

15. A link to Justice and Morality (for deontological justice) - "In order to have a just end, you must first have a just means."

Immanuel Kant

16. Justice is promoting the general welfare of society.

Mortimer J. Adler (his theory again...)

17. Social progress is an essential criterion of justice

Jason Ciarochi (This is true because there is a discrepancy between the laws now, and what we need to change to be more just. In order to ever truly achieve justice, laws and society must constantly change as we discover which actions are and aren't legitimate., There is always a struggle to be just; if our society ever stopped and said "no more laws, we're just now", life would get worse and worse, as new injustices violated rights. The fact is that all societies constantly change. A few hundred years ago, we didn't need restrictions on gun control or automobiles - as society changes, the balance of our rights and justice must change with it, or justice will be just a memory.

18. Another all-purpose link between morality and justice - "It therefore follows that justice differs not at all from right reason."

Marcus Aurelius

19. "The social contract recognizes each member of society as a fundamental equal and it requires the government to rectify conflicts in society and to protect the rights of its citizens."

Professor Alexander Isaacs (A good card that tells us that justice can be achieved only through upholding individual rights and equality, objectively.)

20. "Individuals enter society expecting that their individual rights will be best protected. Society ceases to be useful when those individual rights are no longer being recognized."

John Locke (another card that says 'perhaps society does have a minor need for justice')

Jason's top picks for wonderful voting criteria for justice...

Social progress/ just means/ security/ morality/ individual rights/ social order/ social contract/ (yipes!) categorical imperative/ maximizing the individual and society/ individual autonomy/ dignity/ moral internalization/ promoting equal opportunity/ violating the boundaries of natural law/ fairness/ whether it sacrifices the individual/ expediency/ legitimacy...
(there are many more- this list should just act as a catalyst to really get you thinking.)

Ways to beat a justice position (yes, although the last few pages have convinced you that justice is as fun as a date with Victor, there are ways to beat it).

1. Check their definition of justice. Once you know their standard you can either prove it wrong or show how you uphold it better. For example, if their standard of justice was security, you could either try to show that you best allow for security (thus capturing their value of justice), or explain how their criteria is not a good one to achieve justice, like saying that security as a single criterion for justice ignores liberty and ultimately threatens justice, or you could show how security doesn't necessarily apply to the resolution (for example, if your resolution was resolved: that athletics are overemphasized, etc.).

2. Argue the classic (and annoying) justice response: Justice is only useful in resolving conflicts, nothing is truly a value without inherent worth, because justice is only a means my value of the aesthetic is better! If you have a value like dignity, rights, or happiness, explain how justice really only exists to serve that end, and has no worth of its own. You could say that justice is the shovel that digs up the true treasure of dignity - would you value a shovel more than the treasure it dug up?

3. Pull the hidden dupe. Double up on the criteria. For example, if their value of justice has a criteria of individual rights and your neg criteria is security, in cross examination, ask them if justice transcends mere security (of course they will say 'yes') , and if security is necessary for individual rights - then in your next speech, emphasize your criteria of security and explain how your opponent has to be secure as one of the first steps to being just - the opponent will basically have to win your case to win his own value - you've given him a tough burden...

4. If your opponent is running justice in a resolution which is a question of morality (or if it says "morally justified") pound your opponent for running justice instead of morality and explain how even if the affirmative wins their entire case without a doubt and shows that they are just, it doesn't mean they are moral - that they aren't meeting the burdens of the resolution (don't say "squirrel" or "non-topical")

5. Give a criterion objection (no, not a ceda criteria objection!) - explain how justice must be objective (reread that little paragraph again!), and then show how their criteria is subjective, making it too uncertain to weigh a decision in the round. For example, everyone thinks that there is a clear link between individual rights and justice, right? But that doesn't mean that individual rights is a good criterion for weighing a debate round. You could argue that individual rights, although they have a clear link to justice, are subjective - when do we know when rights are truly violated? Is it a violation of someone's rights when you breathe the same air? What about when you talk to them? What if you touch them without hurting them? What if you threaten them without doing anything harmful? What about just looking threatening? Even individual rights can be proven as a subjective voting criterion because there is no clear distinction of exactly when rights are violated. If it is subjective, then the answer changes from person to person. Now that you have established individual rights as a subjective criterion for justice, you could present your negative criterion, such as the social contract, and explain how the social contract is objective because it presents clear duties of the society. This once again would bring the justice debate to your case. If you effectively establish that justice must be objective in order to be fair and that their criterion for judging the round is subjective, or fickle - you basically make every argument in their case pointless, since it will never prove a foundation for justice. With this approach, it may be helpful to check and see that your criterion is indeed subjective.

6. If you find that they actually are running justice correctly (meaning that they too, have this book), then concede the round quickly and run away. If all else fails, pure persuasion or (worse yet) a squirrel is a legitimate debate tactic at this point. By the way, if your judge is not flowing (these are the people that say their kid is running on of the non-qualifying interp events, ask what L/D stands for, tells you that they are excited about seeing a "mock trial" ,and promise to take "good notes"), then, for future reference, you can bring up the new argument in 2AR (commonly referred to, among non-debaters, as the sleaze or cheese approach.) that Hitler thought he was being just in initiating the Holocaust. *(Editor's note: Victory Briefs does not sanction Jason's suggestions!)* Although you may have doubts as to the true potential of this unique of strategy and desperation, it has successfully defeated even MY justice approach!!! (it's a shame that I never had the chance to retaliate with it.)

O.K. Now, one more time, what's your value?
by Jason Ciarochi

What is a value?

The value you choose is the ultimate end which your position of the resolution is striving to achieve. Let's give a few characteristics of a value, or better yet, define it by what it's not. Values are NOT tangible. You don't value Ronald Reagan (I hope not!), cars, money, your girlfriend, your mother, etc. If you can touch what you claim to be your value, somewhere there's a clerical error, for it's really not a value. In other words, people, places, and things are not values, but rather ideals are. Good examples of values are (in no particular order) : justice, leisure, equality, justice, liberty, security, justice, happiness, life, justice, quality of life, the aesthetic, justice, dignity, self-actualization, justice, individual rights, etc. Please remember that harmony, diversity, and accuracy are not values - apparently between the editions of the handbooks there have been a few shocking new discoveries!

Eanie, Meanie, Minie, Moe...

The toughest decision for a case is to pick your value (unless, of course, it's justice!). Whenever you are choosing a value, make sure it deals directly with the resolution. Since your value is the goal you are striving for, make sure it satisfies the conflict within the resolution. Let's look at a few sample resolutions...

> #1 Resolved: that a liberal arts curriculum is preferable to an employment readiness curriculum in U.S. secondary schools.
>
> #2 Resolved: that the possession of nuclear weapons is immoral.
>
> #3 Resolved: that the deliberate use of deadly force is justified as a response to physical abuse.

In the first resolution, you are determining what is preferable in high school - think preferable to whom? Here's where you come up with a few values dealing with the resolution. You could value self-actualization, individual rights, knowledge, etc.

In the second resolution, you are asked a question of morality - so you'd either value morality, or morality-based values such as dignity, rights, security, justice, etc.

In the third resolution, you are weighing rights - when is an unjust action justified? You could value the victim's rights over the rights of the accused, justice, dignity, morality, individual security, etc.

Remember, the most important thing is that your value weighs toward your side of the resolution. No matter how great and wonderful your value is, if you can't win it, who cares? For example, if you could show the absolute superiority of victim's rights, you would always win the affirmative side of resolution #3.

How do you define a value?

Very clearly. Actually, your definition of your value tends to be your standard, or voting criteria. For example, if your definition of justice is having rights until they infringe upon other people's rights, then your criterion would be the protection of rights. Another important thing - there is a difference between

criterion and criteria - criteria is plural; you either have one criterion or several criteria. Your criterion has several purposes: the first is to have a way of achieving your value. Another purpose of the criterion is to give the judge your standard of what you have to prove to win the round. This allows the judge to prioritize a whole bunch of arguments in the round. Remember, since your criterion is the standard of the round, there should be a clear link between your criterion and the resolution. For example, on resolution #3, if you win the rights conflict as your criterion, you'll win the round (unless there is divine intervention or judge error). Your criteria should also be very easy to understand.

How to set up your value and criteria...

Let's look at resolution #2... It implies that the negative must show that he (or she) is not immoral. What will the standard for morality be? Why is this standard (or criterion) better? O.K., here's another example from my Tournament of Champions case:

> My negative value was one of morality.
> My reason for why it was the best value was because it was inherent in the resolution -whoever could prove morality would prove the resolution.
> My standard for morality was individual rights. I choose individual rights because it had a clear link to morality - I submitted that in a conflict situation any action taken to uphold rights was moral. So, individual rights was my criteria. I established it as a better criterion for morality because it was objective - easy to understand and define. I maintained that it was easy to determine when rights were being violated. Because this criteria was established as a better one, the casework was a piece of cake.

O.K., a quick recap of the value set-up,

You need to:

1. *Have a value (what a surprise!)*
2. *Tell why it's desirable (like it is implied in the resolution, or "justice is the only unlimited good", or that your value of reason takes everyone's rights into consideration, etc.)*
3. *Define your value (commonly your criteria/criterion)*
4. *Tell why your criterion/criteria is better.*
5. *Make sure that your value and criteria prove the resolution.*

Also, every caseside argument should impact back to your criteria; if not, throw it out, because otherwise it's pointless if it doesn't prove your value. The only exceptions to this rule are semantic arguments (like justified vs. excused, etc.)

Criticisms of Social Contract Theory
by Priya Aiyar

Perhaps no philosophical concept is as commonly abused, misapplied, and oversimplified in Lincoln-Douglas rounds as the social contract. Most L-D debaters are familiar with the fundamental premises and arguments of the major social contract theorists, which will not be reiterated here. However, they often neglect to familiarize themselves with more subtle aspects and extremely important criticisms of these positions. This section will attempt to address some key problems raised by the social contract, beginning with general observations and then dealing with the theories of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, focusing on these three philosophers' flaws and shortcomings.

The basic idea of the social contract incorporates two primary values or principles -- the importance of liberty, or the idea that governments ought to be founded on free will rather than force, and the primacy of justice, or the idea that moral rectitude should be the basis of political society. Social contract philosophy has proven practically applicable and successful; as political theorist Ernest Barker declares:

> **Ernest Barker, Social Contract, Oxford University Press, 1947, p. vii.**
> if it [the social contract] were judged by its fruits, on a pragmatic test of truth, it could bring to the bar of judgment a rich record of achievement.

However, the theory has been subjected to many valid criticisms. Many dismiss it on the grounds that it is contrived, not natural, in its explanation of the state of nature and society's origins. Mortimer J. Adler explains in his book Ten Philosophical Mistakes that proponents of the social contract regard the state as mechanical, rather than as the product of organic evolution which it really is. Robert C. Solomon states that the contract metaphor is predicated on false historical and anthropological assumptions and ignores humans' essentially social and emotional nature:

> **Robert C. Solomon, A Passion for Justice: Emotions and the Origins of the Social Contract, Addison-Wesley Publishing Company, Inc., 1990, p. 57**
> The social contract metaphor..presumes an outrageous pretension, that we can build society from scratch, and may have actually done so.

> **Robert C. Solomon, A Passion for Justice: Emotions and the Origins of the Social Contract, Addison-Wesley Publishing Company, Inc., 1990, p. 60**
> It is easy to see the appeal of [social contract] theory, but it is also easy to see what nonsense it is and how false a portrait of our nature..We are not and never have been naturally independent, and society has always been based, first of all, on the natural affections and affiliations in which we find ourselves with others. The idea that we could exist or have ever existed as purely autonomous creatures is at best an inspiring intellectual fraud.

Robert C. Solomon, A Passion for Justice: Emotions and the Origins of the Social Contract, Addison-Wesley Publishing Company, Inc., 1990, p. 149-51
The prominent foundation of so many current theories of justice - - the so-called "social contract" and the contrasting "state of nature" -- should be reconsidered within the context of this biological picture.. We are, like wolves and chimps, products not just of our genes but of the conditions in which we find ourselves, which are, first and foremost, social conditions. That is where the state of nature theorists go wrong; there is no individual in the state of nature, no war of all against all.. We are social creatures.

Others argue that the social contract is *a priori*, not historical, in its interpretation of political order and authority, and that it is legalistic, not ethical, in its explanation of political obligation. These issues will be addressed in the context of specific theories later, but it is important to make one more comment on social contract philosophy as a whole. The social contract is actually composed of two ideas or contracts, which are connected but distinct. The first is the contract of government, the idea that the state is based on a contract between rulers and subjects. This idea, however, assumes *a prior* contract, a contract of society. There must already be an organized body politic before there can be an agreement between rulers and subjects. This is the social contract proper, and it actually includes a series of contracts between every member of the community and every other member.

Hobbes, Locke and Rousseau all emphasized the contract of society; none of the three, although there are some qualifications when it comes to Hobbes, dealt with a contract of government (we should note that while it is possible to believe in a contract of society without believing in a contract of government, it is not possible to believe in a contract of government without believing in a contract of society). According to Rousseau, the community created by the contract of society is self-governing, so there is no contract of government. According to Locke, the community chooses a trustee government; while it does not makes a contract with the government, it may void the government for violation of trust. Finally, according to Hobbes, the community relinquishes all rights and authority to a sovereign Leviathan; there is no contract of government and the Leviathan is thus subject to no contractual limits.

However, as mentioned before, there are two qualifications to this statement of Hobbes' position. First, Hobbes believes that all citizens agree among themselves to form a community and to obey a government; there is a contract of government, in a sense, but it is between subjects themselves, not between subjects and ruler. Second, subjects may rebel if the ruler fails to protect them adequately, so there is some sort of implied, very minimal contract between ruler and subjects.

We can now consider one key distinction between Locke and Hobbes. Locke abandons the notion of a contract of government because he feels it would place government in too powerful of a position -- it would make government an entity independent of its citizens, with rights against its citizens, rather than as an institution which exists only for and through the people and is bound to their interpretation of its trust and duties. Hobbes rejects the contract of government for a diametrically opposite reason, because it would place the community in too powerful of a position, making the community an independent entity with rights against Leviathan. With these general ideas in mind, we can turn to specific criticisms of social contract theories, beginning with the theory of Hobbes.

Hobbes is probably the most frequently attacked of the contract philosophers. His negative view of human nature leads him to characterize the pre-societal state as a "war of all against all" in which human life is "solitary, poor, nasty, brutish and short." Individuals, to fulfill their basic need for security, simultaneously contract with each other to limit their liberty and obey a government: "I authorize and give up my Right of Governing my selfe, to this Man, or this Assembly of men, on this condition, that thou give thy Right to him, and Authorize all his actions in like manner." The sovereign they create,

Leviathan, is authorized to do whatever it likes as long as it guarantees its subjects' security. The first common and important criticism of Hobbes is that his vision of the state of nature is overly pessimistic and historically incorrect, as John Bramhall states:

> **John Bramhall, paraphrased by John Bowle, Hobbes and His Critics, Alden Press, 1951, p. 121**
> There is no evidence, says Bramhall, for the state of nature envisaged by Hobbes. Within their own species animals do not habitually prey on one another, and the evolution of civil society is due to cooperative effort. The very existence of civilization disproves the Hobbesian war of all against all.

However, Hobbes thinks of the state of nature as a philosophical construct rather than a historical actuality, so this point may be irrelevant. A more important criticism is that Hobbes dismisses all traditional ideas of natural law and natural right. At the same time, he believes that humans will always act in accordance with certain universal laws of nature, particularly the law of self-preservation, and he bases his interpretation of the social contract on this belief. John Bowle points out this inherent contradiction:

> **John Bowle, Hobbes and His Critics. Alden Press. 1951, p. 126**
> Here, indeed, Hobbes attempts to have it both ways. Having written off the traditional Law of Nature and made all law simply the command of a superior, saying in fact that "might is right", he invokes certain characteristics of human conduct as Laws of "Nature", backing up his man-made state.

Alexander Rosse, a contemporary of Hobbes, questions Hobbes' assertions that government action always benefits subjects and all exercise of government power is honourable. Like most other critics, he alludes to the tyrannical nature of the Hobbesian society:

> **Alexander Rosse, quoted by John Bowle, Hobbes and His Critics. Alden Press. 1951, p. 66**
> "Whatsoever a prince doth," [Hobbes] says, "can be no injury to the subject." This doctrine will hardly down with freeborn people who choose to themselves princes, not to tyrannize over them but to rule them.

> **Alexander Rosse, quoted by John Bowle, Hobbes and His Critics. Alden Press. 1951, p. 67-8**
> Hobbes, on the other hand, implies that "unjust actions joined with power are honourable." But, says Rosse, echoing St. Augustine, "Where there is government, unjust actions are punished, not honored..". Power is only justified if it is moral.

John Bramhall also indicts Hobbes for supporting a state based on negative utility, which is only concerned with protecting its citizens from harm and does not attempt to create any sort of positive, constructive moral vision:

John Bramhall, paraphrased by John Bowle, Hobbes and His Critics. Alden Press. 1951, p. 125
Hobbes' negative utilitarianism..can give only a negative security..This blindness to moral values, the lack of a constructive vision, [Bramhall] implies, is one of the gravest limitations of Hobbes' outlook.

The final shortcoming of Hobbes' argument involves the impracticality of his theory. The authoritative form of government he suggests could not pragmatically fulfill even the limited role of providing citizens with negative security:

John Bowle, Hobbes and His Critics. Alden Press. 1951, p. 45
On the other, political level there is little doubt that Hobbes was unpractical. Even if the state has the purely utilitarian function he suggests, it is very doubtful if the precarious authoritarian government which he advocates will long attain even this limited aim, nor..would it be psychologically satisfying. In practice, a self-governing commonwealth succeeds much better in this purpose.

The Hobbesian contract is not particularly well-suited to Lincoln-Douglas debate; it should not be difficult to defeat if you encounter it in a round. **John Locke's** social contract, on the other hand, is more commonly utilized and much more applicable to contemporary issues, yet there are also significant flaws in his theory. First, all of Locke's analysis is based on the premise that there are objective, absolute natural laws, yet he does not satisfactorily justify this assumption, as philosopher Robert Nozick explains:

Robert Nozick, Anarchy, State and Utopia, Basic Books, Inc., 1974, p. 9
[Locke] does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his Second Treatise.

Next, there are two major problems with Locke's conception of the state of nature. While Hobbes sees the state of nature as a philosophical tool, Locke believes it actually existed. However, there is much evidence and analysis which indicates that it is ludicrous to regard the state of nature as historical fact -- refer to the Solomon cards above. Furthermore, Locke claims that in the state of nature, people will recognize limits on their liberty, and will rationally derive and follow natural moral laws. They only enter society to remedy three principal imperfections which result in the pre-societal state, where men are judges in their own case -- partial judgments, insufficient force for the execution of judgments, and inconsistency in judgments passed by different people. The flaw, of course, in Locke's argument is that his state of nature is not a state of nature at all, but a political society with laws and guaranteed rights:

Ernest Barker, Social Contract. Oxford University Press. 1947, p. xx
...the difficulty of such a pre-political condition as Locke describes is that it is really political. Locke's state of nature, with its regime of recognized rights, is already a political society.

Locke can also be criticized for his excessive individualism. Ernest Barker explains that Locke errs in basing his theories only on the sanctity and autonomy of the individual, without considering humans' inherently social nature (again, refer to the Solomon evidence) and the larger needs of the community:

Ernest Barker, Social Contract. Oxford University Press. 1947, p. xix
..an individualism based on religion was made to trail clouds of ingloriousness. This is the penalty of making the solitary individual the pivot of all your thought...The figure of the Individual -- seated on his desert pillar -- this, in brief, is the symbol with which we are left, alike by the Essay and the Two Treatises.

A final problem with the Lockean contract concerns the ambiguity of sovereignty. Locke never resolves the question of where sovereignty in his society should lie -- with the people, with their representatives in the legislature, or with the executive branch of government:

Ernest Barker, Social Contract. Oxford University Press. 1947, p. xxv
Locke has no clear view of the nature of sovereignty. He speaks at one time of the supreme power of the people, or in other words the community; he speaks at another of the supreme power of the legislative, which may, it is true, be the community but which may also be a body of representatives appointed by the community; and in still another context he remarks that "where..the executive is bested in a single person who has also a share in the legislative, then that single person, in a very tolerable sense, may also be called the supreme power". "Under which king, Bezonian," one is tempted to ask -- community; legislative; or single person? Locke has no certain answer.

As the argument regarding sovereignty suggests, Locke is often attacked for his vagueness, as is the last philosopher we will consider, **Jean-Jacques Rousseau**. Rousseau was more of an *a priori* theorist than a practically experienced political philosopher, and he is generally acknowledged to be inferior to Locke in maturity and originality of thought. The first important criticism of Rousseau involves his love-hate relationship with the concept of natural law. It is interesting to note that his first draft of The Social Contract contained a chapter which aimed to refute the idea of natural law; he omitted the chapter in his final draft. Ernest Barker explains Rousseau's oscillations:

Ernest Barker, Social Contract. Oxford University Press. 1947, p. xxix
Where did Rousseau stand in regard to the idea of natural law? He hardly knew. On the one hand he needed it -- for how could there be a legal thing like a contract of society unless there were a natural law in terms and under that sanction of which a contract could be made? -- and he also found it in his authorities. On the other hand, he disliked it; and he felt in his bones that the nation made law, and not law the nation.

The most heavily and easily attacked aspect of Rousseau's philosophy is his idea of the general will, an expression of the public interest and the controlling factor of his idealized society. Rousseau never adequately defines the general will. He distinguishes it from the will of all, and describes it as a will of general and positive intention which may not be felt and believed by all, and may in fact be voiced by a single person, a "legislator", who truly understands what society requires. Rousseau attempts to use the general will in support of primary democracy, but his theory can also be used to justify tyranny and authoritarianism:

Ernest Barker, Social Contract. Oxford University Press. 1947, p. xxxiii
[the general will] becomes in [Rousseau's] hand a keen two-edged sword which seeks to defend democracy (and primary democracy at that), but ends by arming Leviathan. Was not the Napoleon of the Code an admirable "legislator"?

Rousseau fails in his defense of primary democracy through the general will in another way. He dismisses representative democracy, and thus unintentionally dismisses democracy as a whole. Uncontrolled

primary democracy is not feasible; Rousseau admits that a "mayor of the palace" would be needed to insure the supremacy of the general will. Again, the potential for tyranny is exposed:

> **Ernest Barker, Social Contract. Oxford University Press. 1947, p. xxxiv**
> We touch at this point on a cardinal difficulty in Rousseau's thought. He wants to use his two-edged sword [the general will] in defense of primary democracy..He rejects representative government, or parliamentary democracy. But he only does so to find in the issue that he has rejected democracy itself. The unguided democracy of a primary assembly without any parties is a souverain faineant [trans: idle sovereign]. A "mayor of the palace" must be provided; and we are left in the issue with Pepin of Heristal acting as legislator for the souverain [trans: sovereign].

A fundamental, underlying problem with the general will is that, while it may be theoretically attractive, it is unclear how it can be applied and enacted in practical political life. Rousseau never adequately deals with the pragmatic implications of the concept of the general will:

> **Ernest Barker, Social Contract. Oxford University Press. 1947, p. xxxiv**
> There is much to be said in favor of the idea of the general will, taken in and by itself. The problem is the translation of the idea; its application in actual life; the discovery of the organ through which it acts. It is here that Rousseau sails into troubled waters.

Lastly, Rousseau's contract can be critiqued for its failure to protect individual rights and liberties. Rousseau anticipates this argument and tries to preempt it by stating that, under his contract, every individual retains the power of self-government through their participation in the general will: "Each, giving himself to all, gives himself to nobody." However, while each citizen's interests make up only a minute portion of the general will, they must completely subordinate themselves to this will. Individuals are subject to tyranny:

> **Ernest Barker, Social Contract. Oxford University Press. 1947, p. xxxiv**
> Here Rousseau enunciates his famous paradox, "Each, giving himself to all, gives himself to nobody": in other words, each gives himself to himself, and each is still his own master. The paradox conceals a paralogism. I surrender all myself -- and I surrender it all to 999 others, as well as myself: I only receive a fraction of the sovereignty of the community; and ultimately I must reflect that if I am the thousandth part the tyrant, I am also the whole of the slave. Leviathan is still Leviathan, even when he is corporate.

The Rousseauan social contract is deficient in many ways; it has been labeled an impractical, utopian fantasy. Rousseau himself agrees that the ideal of primary democracy which he supports can only be applied to small states (i.e. the Greek polis), and could never function in a nation like the United States.

In conclusion, it is important to remember that this section has presented only a few of the many possible arguments against the three major social contract theories. Debaters sometimes accept social contract philosophy as an infallible submission in a round simply because it is so often used and lauded. However, if you force your opponent to explain and defend the specific version of the contract he/she is advocating, and if you point out the problems, ambiguities and inconsistencies in his/her contract philosophy, you should have no problem defeating contract-based argumentation.

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Political Duty
by Hal Vincent

Anyone who has ever been involved in three or more Lincoln Douglas debate rounds has probably been faced with arguments centered around moral obligations or duty. It's true, probably the most frequent argumentation is based on questions like, "What is duty" and "from where is this duty derived." The most misunderstood arguments are also the most easily winnable arguments in LD. These arguments stem from political obligations or more simply what the government must do for its citizens.

Because so much of many useless philosopher's time has been spent contemplating governmental duties, it is no wonder that just a little library time can produce quotations saying everything from "a just government is no government" to "suffering and oppression are the government's best tools to effective leadership," (Stalin is my favorite for those ideas). One thing will always remain true in LD debate: regardless where this duty is derived from or who must fulfill a duty, or the duty itself for that matter, cannot be blatantly contradictory to the basic values of morality and/or justice. Political obligations, however, tend to lend a gray area providing interesting debate. The duty of government might actually be contradictory to these values yet duty still be upheld.

I'd like to say the approach to political obligations that I'm advocating will be most effective on lay judges, policy cross-over judges, college judges, school janitors, and any other generally open minded person. This approach probably won't appeal to a strict, old-fashioned school marm who knows more than you do anyway and won't hesitate to tell you so.

It is almost impossible that a government faced with a decision will act justly, uphold duty and morality, take an action, and every single person will reap the benefits of this awesome government that helps everyone and never, ever makes someone upset. Basically, no one is perfect, especially not the government! So. let's say the government tries to do good, but, oops, someone is wronged. Does that automatically make the government's action immoral and/or unjustified? NO!!!

First, it is important to note the role of and the reason (if any) for government.

> **Herbert Spencer, essay: "The Principles of Ethics," New Grolier World International Dictionary p. 222**
> "Society exists for the benefit of its members; not the members for the benefit of society."

> **Emile Brunner, Justice and the Social Order.**
> "All institutions exist for the benefits of man; man never exists for the sake of institutions.

No matter what the government is suppose to do it must work for its members and not attempt to look after its own well-being first, unless it protects itself to better serve the people and does not hurt them in the meantime.

It is weird why society came about in the first place. It is both logical and illogical, natural and unnatural, smart and stupid. On one hand, it is crazy to assume man would join and create government, for society asks us to deny our natural instincts, thought processes and behaviour. Naturally man is aggressive and only starves to provide for a few (family or friends?) and society asks to abide by rules and limits our behaviour for the benefit of a whole group of people. History shows us government cannot always defeat human nature. Rome turned violent, Atilla the Hun was pretty mean, and of course killing out of "love"

in the Crusades. Some even say they were uncivilized and we've outgrown that: just look at the atrocities of Adolf Hitler and our own government's assassination of President Kennedy (if you believe Oliver Stone). On the other hand, government is completely rational. Now, we have a tool that will limit our animal side and enhance our humanness. Logically, government then can provide the atmosphere necessary for enjoying individual rights. John Locke is a proponent of this idea.

John Locke, 2nd Treatise of Government, Gateway ed.ltd., 1955, p. 109
"The great and chief end in man entering society [is] the enjoyment of their properties in peace and safety."

John Locke, 2nd Treatise of Government, Gateway ed.ltd., 1955, p. 106
" ..and all of this shall be directed to no other end but the peace, safety, and public good of the people."

Bowie and Simon, The Individual and the Public Order, 1986, p. 59
" ... to avoid the state of war ... is one great reason of man putting themselves into society and quitting the state of nature."

The government becomes the tool for morality and/or justice, for it should fairly limit human nature and man's natural tendency not to abide by values. Government can provide a better life for all its members.

The Political Ideas of St. Thomas Aquinas, p. 121
"The common good is the end of each individual member of a community, just as the good of the whole is the end of each individual part."

So society must always work for the people, even if that means occasionally justly limiting their rights in order to better serve them. Simply because a government must repress a right does not automatically make it unjust or immoral. A just government must also create a stable environment in which morality and justice can flourish. With the aforementioned open minded judges, it is possible to excuse a slight immorality and still be moral, just, etc. because of duty. The excuse is only valid if:

1) the definite intention it to try to provide peace and order

2) an even better good at the end of a particular action is known.
ex: we achieve morality but if we do X, then we can have an even better state of morality.

The real question exists: how much does morality or justice factor in political obligations? Well, that is what you'll be debating. First, make sure the action that the society is contemplating is in fact a duty, because if it is not, it'll be near impossible to allow for the slight infractions of justice and morality. Here are a few cards to help determine if an action is an obligation:

The Encyclopedia of Philosophy, vol 5, p. 40
"Morality is not concerned simply with the pursuit of personal good; it also is concerned with the acceptance of rules that limit the pursuit of good when it affects others."

Richard Norman, The Moral Philosophers, p. 98
"Actions have moral worth only if they are done from duty."

Mortimer J. Adler, The Great Books of the Western World, p. 361, vol. II
"The obligation in every case is to obey the law, but it is not a duty unless it is moral."

According to Kant, regardless of what the action is or what end takes place the mere act of intending to fulfill duty is moral in and of itself. If government tries to meet its obligations then morality and justice have automatically been met. Richard Norman clarifies:

Richard Norman, The Moral Philosophers, p. 95
"Kant stresses on doing 'duty for duty's sake'. Duty is to be performed entirely for its own sake, not in order to promote happiness or fulfillment."

Richard Norman, The Moral Philosophers, p. 114-115
"What [Kant] says is that an action has no moral worth if it's done for the sake of consequences such as the promotion of happiness, or the prevention of human suffering."

You can then attempt to uphold morality and/or justice by simply allowing government to attempt to fulfill its obligations. Regardless of what happens, duty for duty's sake = morality. You might even want to go as far as to say the only thing we can be sure of is that it is moral for a government to attempt to meet its obligations.

If you are a bit more daring you can even try to predict the end of an action and show how an even higher state of justice or morality exists as a result of a government action, hence an infraction on a right may lead to an even better good (for instance, limiting the right to know so the government can secure itself and ultimately better serve the people).

That leads to another important point: "What are the obligations of government?" That is difficult to pinpoint, but here are a couple.

1) To keep order.

Order is a fun one because there are a lot of questions about what is a just or proper order. Is it nothingness like New Zealand perhaps, or is it a totalitarian state like imperial Japan? That is for you to decide. Personally, I'd say a social order is an environment where only minor limitations exist on a society's members so as to create a stable situations in which justice and/or morality flourishes to benefit nearly all. Whatever you decide, stability is an absolute necessity to allow for the enjoyment of individual rights. Here are some cards on order:

Simon Weil, The Need For Roots, A Prelude to a Declaration of Duties Toward Mankind, p. 11
"Above even food and shelter, we must have order. The human condition is insufferable unless we perceive a harmony with order in existence. Order is the first need of all."

Russel Kirk, The Roots of American Order.
"Order is the first need of a commonwealth. It is not possible for us to live in peace with one another unless we recognize some principles of order by which to do justice."

Russel Kirk, The Roots of American Order.
"Order is the path we follow by which we live with purpose and meaning; above all else, we must have order."

Robert Bierstadt, Freedom and Control in Modern Society, 1954, pp. 6-7
"Society indeed is impossible without order; in a larger sense, society is synonymous with order - and it is authority which serves as the foundation of much of the order which society exhibits."

2) Keep liberty in check for the common good.

This is important, because if liberty is not limited, the society does not exist because of the abuse of that liberty that is likely to take place. Government should allow as much individual freedom as possible, but not absolute or the good of the whole can be jeopardized by a greedy few.

Mortimer J. Adler, We Hold These Truths, 1981,p. 82
"The selfish interest of the individual should be subordinated to the common good that is to the welfare of society as a whole and the security of the state."

Nolan and Kirkpatrikc, Living Issues in Ethics, p. 229
"Because there are many different ways to create and maintain a social order, to come to and implement social decisions and to produce and distribute material goods, there are moral choices that any society has to make about each of these areas of human action."

Most importantly, it is certainly just/moral to limit liberty in order to create or maintain order and a government in general. If liberty was never limited then society never would have come about in the first place.

3) Society's obligation to its members or to the world in general.

This is a fun one. Should society strive to help its own people or the world community? The answer is yes, both of them. The first obligation, however, is to the ones in direct contact with the government, viz. its own citizens.

Stanley Hoffman, Duties Beyond Borders, p. 152
"We have domestic obligations of justice because the national community is a special kind of bond from which obligations and social roles are derived. None of these exist in the world at large."

Remember, Justice/Morality can be upheld simply by a government fulfilling its duties, and the first and primary obligation of a government exists between its own citizens. If an action benefits a government's citizens and the rest of the world benefits, terrific! Above all, the citizens of a particular society must not be harmed.

My personal favorite way to use political duty is in combination with justice. That is to say that justice can never be upheld unless the government does X. X usually involves the resolution. That opens up all sorts of possibilities. You can claim X is a duty therefore intrinsically just, or say this action X best benefits the people and therefore is just, or even though this action X is unjust, ultimately it will be so good that justice will sprout everyone's ears. The debate then can focus on all the questions of duty and is

usually a clear cut round. You'll either look like a champ or the judge will think you are crazy and you'll burn in flames, but it is a fun gamble. Here are some justice and duty link cards:

Mortimer J. Alder, The Great Books of the Western World, vol II, p. 362.
"[Duty] is merely an aspect of the virtue of justice, and amounts to nothing more than a just man's acknowledgment of the debt he owes to others."

Mortimer J. Alder, The Great Books of the Western World, vol II, p. 259.
"Duty and Justice are qualities that dispose men to peace and order."

Mortimer J. Alder, The Great Books of the Western World, vol II, p. 259.
"Duty and justice are both said to be laws of nature."

Noland Kirkpatrick, Living Issues in Ethics..
"Failure to abide by covenants abolishes any hope of justice."

Never let anyone use duty to exude gross atrocities or violations of justice/morality. It would be sickening to say, "Hitler was justified to massacre innocent Jews because it was his duty to help Germany." Even if a duty exists you can never win a round by excusing such violations, only excuse minor ones with a great deal of persuasion.

Political obligations can be confusing, but the numerous ways of approaching ancient and modern arguments can provide excellent debates. The best part is there is no correct political philosophy and everything I've claimed can be easily refuted, but that is what intelligent debate is all about.

Aristotle
by Jay Steed

Aristotle is recognized as one of the greatest philosophers in the history of Western thought and contributed more original thoughts to more subjects than perhaps any other person. While these accolades are generally made and his accomplishments recognized, few people apply Aristotle specifically and intentionally in debate rounds or in general discussion. His ideas are present in many formats and are prevalent in many modern philosophies; people simply do not return to the original source for the analysis.

This practice is detrimental, however, for several reasons. First, Aristotle's writing is clear, concise, and readily comprehensible, thus making him very quotable in rounds. Few philosophers, or names, carry the prestige and influence of The Philosopher, thereby strengthening one's credibility by using him. A final reason to use the Greek in debate is that he derived many concepts which are vital to Lincoln-Douglas and to modern ethical thought. Why not use them?

This defense seemed essential because, in my entire debate career, I may have heard Aristotle used five times and every time he was either used incorrectly or superficially. People should seriously consider using major components of Aristotelian thought in both cases and in refutations. The purpose of this essay is to examine several of his basic ideas and to look at their relevance in debate. This is not a comprehensive review of Aristotle's works, nor even of all hose ideas useful in LD. Rather, it is an introduction to his thought which will hopefully inspire further research and use of the philosopher.

Perhaps the logical starting point for a "values" look at Aristotle is his **NICOMACHEAN ETHICS**, in which he develops much of his moral theory. The first lines of the work provide the basis for major value analysis...

> *** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1094a, 1-3.**
> "Every art and every inquiry, and similarly every action and choice, is thought to aim at some good; and for this reason the good has rightly been declared to be that at which all things aim."

This analysis not only establishes Aristotle's own view of the good, but may also be used as a justification for any value, or good, which can be shown to be the ultimate end of human action. If, for example, I wish to maintain that dignity is the greatest possible value I would merely have to prove that all human actions are motivated by the ultimate end of promoting dignity. If this could be shown, all other values and goods would become inferior and subordinate to dignity, in that their only purpose would be as a means to a greater end.

Aristotle, however, uses the above argument to support his claim that happiness is the greatest value. His conception of happiness is limited to separate it from hedonistic philosophies, subjective whims, and fleeting "good times." The happiness of which Aristotle speaks is that of a rational, deliberative man who seeks to lead a good life.

> *** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1097b, 1-7.**
> ...such a thing as happiness...we choose always for itself and never for the sake of something else, but honor, pleasure, reason, and every excellence we choose indeed for themselves, but we choose them also for the sake of happiness...

In this manner, Aristotle shows the nature of happiness as an end unto itself, to which all other virtues are subservient. Again, this argument may be applied to other values, as one may accept Aristotle's premises while denouncing his final conclusion. However, if one uses a very clearly defined and limited conception of happiness, that can be used as an acceptable standard, also. In the remainder of his Book One, The Philosopher elaborates further on the nature of the good and the nature of happiness. For our purposes, however, the above will suffice as a basis for L.D. argumentation.

In Books II, III, and IV, Aristotle shifts the focus of his writing as he attempts to identify moral excellence and to examine the relationship between moral actions and moral actors. First, when one attempts to make a moral judgment about an actor based on his actions, Aristotle maintains that several criterion must be met. These basic restrictions still manifest themselves in our modern laws and in our ethical norms. In order to judge a person based on his actions, Aristotle holds that...

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1105a, 30-33.**
"The agent must be in a certain condition when he does them; in the first place he must have knowledge, secondly he must choose the acts, and choose them for their own sakes, and thirdly his action must proceed from a firm and unchangeable character."

These three criteria certainly merit further examination, as, independently or together, they form very reasonable standards by which to condemn or excuse men's actions (With my apologies to feminists and other PC people, both Aristotle and myself will use male pronouns throughout this essay. I recognize that women have dignity and worth, and can be just as immoral as men. I'm just too lazy to try and incorporate gender correct stuff into this essay - live with it.). *(Insert your favorite Victory Briefs disclaimer here.)*

First, Aristotle holds that a man must have knowledge of his action and its ramifications in order to be morally culpable or praiseworthy. If I act in ignorance, I cannot know that I am moral or immoral, and thus cannot be held responsible. Our laws excusing the criminally insane from punishment and blame reflect this belief. Aristotle does clarify that those who are drunk or otherwise ignorant due to self inflicted causes do not receive clemency, as they willingly choose to be in a position where immorality will likely accrue from their choice. Again, this theory is similar to our laws, as evidenced by drunk driving, criminal negligence, and the prosecution of drug crazed ax murderers.

Secondly, Aristotle maintains that one must have a choice in his actions in order to be morally judged. If I am compelled by forces beyond my control to take a course of action, then the moral outcome of the action itself is irrelevant to my moral status as agent. This stance is clearly reasonable in that a moral person can be compelled to take an immoral action, and, conversely, an immoral actor may be compelled to take moral actions. In either case, the action cannot be seen as a fair manifestation of character. A good example of the correctness of this view would be a criminal who pays retribution to a victim and serves time in prison, both due to a court order. His action is clearly the right one, but few would claim our convicted felons to be a moral bunch of guys. They are "moral" because they have no choice.

Both of these criteria for judgment (knowledge of the action and a choice not to do it) support the idea of man as a free moral agent, who can only be judged if he willingly chooses, with full awareness, an immoral act. The two ideas set up a clear framework for ethics, but there are circumstances where these criteria are not so simple. Aristotle clarifies the above points and raises this complication in the following passage.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1110a, 1-10.**
"Those things are thought involuntary, which take place under compulsion or owing to ignorance, and that is compulsory...being a principle in which nothing is contributed by the person who acts or is acted upon.... But with regard to things that are done from fear of greater evils or for some noble object (e.g. if a tyrant were to order one to do something base [under threat of murdering one's family if they refuse]), it may be debated whether such actions are voluntary or involuntary.

Aristotle ultimately concludes that extreme consequences can sometimes warrant immoral actions, but generally one ought not be compelled to immorality but should rather suffer dire consequences. It should be noted, in any case, that the idea of the free agent does have limits and hazy areas, but also has much validity.

The third requirement for moral judgment of a person is that the action proceed from the true character of the person. In other words, a very immoral person may take a moral course of action because it suits his purposes or because the action did not turn out as he intended. Quite simply, Aristotle realized that we must examine the intent of the person as well as their action. Aristotle was one of the earliest philosophers, then, to introduce the theme of balancing deontological and teleological outlooks. As the man himself explained,

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1105b, 5-7.**
"Actions, then, are called just and temperate when they are such as the just or temperate man would do; but it is not the man who does these that is just and temperate, but the man who also does them as just and temperate men do them."

Clearly, Aristotle believes that the character of the actor is important in the evaluation of the person. These three standards for moral judgment are all fair guidelines for people. Now, however, we must examine what the person with a good character, knowledge, and choice should do. What is the moral act for the moral actor?

Aristotle composes a fairly simple rule which guides our everyday actions, our major moral decisions, and which should be followed in almost every other decision relating to ethics. The common name for this rule is the **Golden Mean**. Aristotle held that every corrupt action goes to an extreme, either of **deficiency** or of **excess**. The moral action, therefore, lies in the middle of the two excesses, thus being the mean between the two.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1107a, 1-5.**
"[Moral excellence] is a mean between two vices, that which depends on excess and that which depends on defect...it is a mean because the vices respectively fall short of or exceed what is right... while excellence both finds and chooses that which is intermediate."

Aristotle maintained that every virtue, every excellence, every moral character was the product of this mean, this "middle ground," if you will. Some examples of this view are courage, which is a mean between cowardliness and rashness, and pride, which falls between undue humility and boastfulness. Many more examples could be listed, and in Aristotle's work, many are, along with a lot of detail. These two examples serve to clarify, however, and are sufficient for that purpose. The concept of the intermediate as virtue has intrinsic value as a standard and, therefore, has significant relevance in philosophical discourse and in Lincoln-Douglas debate. Aristotle not only sees the importance of the theory itself, though, and uses it to create yet another vital definition.

From the golden mean, Aristotle derives his conception of justice, a value near and dear to the hearts of L.D.'ers everywhere. Acting justly, to Aristotle, is an excellence much like other excellences, such as courage. Two basic elements of justice separate it from these other virtues, however, and make it superior. Aristotle enumerates the superior quality of this value and the rationale behind it in the following:

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1129b, 30-33, 1130a 3-5.**
"[Justice] is complete excellence in its fullest sense, because it is the actual exercise of complete excellence. It is complete because he who possesses it can exercise his excellence toward others too and not merely by himself... For this reason justice, alone of the excellences, is thought to be another's good, because it is related to others; for it does what is advantageous to another..."

The basic reasons, then, for the supremacy of justice among the excellences are: First, justice embodies the very ideal of excellence. He who is just is excellent, and he who acts only excellently must ultimately be called just. Justice is the all encompassing excellence. The second rationale is that other excellences may be performed independently, without benefiting anyone but the acting agent. Justice, however, deals with the relations between individuals. If I act justly, I not only receive the satisfaction of being a really great person; I also benefit other people and the community, thereby increasing my goodness and the ideal of the good.

At this point, one can understand that Aristotle thinks justice is very important, and one might even be compelled to try to be just, but that same "one" is probably asking, "What IS justice? How is it defined? (Maybe nobody is asking this, but let's assume that someone is, it makes me feel important - humor me)". Justice, as aforementioned, is an excellence, and it is derived from the same theory as the other excellences, that theory being the principle of the intermediate, or the Golden Mean. Aristotle held that if people got more than they were due, that is to say an excessive amount, then they violated justice. If people received too little, or less than they were due, then they were done an injustice. Clearly, then, justice seeks to give every person that which is their exact due, no more and no less. This principle is obviously derived from the principle that every virtue or excellence is an intermediate point between extremes. Aristotle explains this conception of justice in terms of equality.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1131a, 10-14.**
"Since the unjust man is unequal and the unjust act unequal, it is clear that there is also an intermediate for the unequal. And this is the equal; for in any kind of action in which there is a more and a less there is also what is equal. If, then, the unjust be unequal, the just is equal... And since the equal is intermediate, the just will be an intermediate."

Thus, Aristotle links justice quite clearly to his concept of excellence through means. However, it should be clarified that by the word "equal," he does not intend some type of moral socialism. Rather, he uses the word to express the concept of extremes and intermediates. Equality itself is a basic component of Aristotelian justice, though. The perception of equality will become more clear as we turn to the specific types of justice Aristotle identifies and to their application in ethics.

Now, justice is not just a nebulous concept to Aristotle, but is rather a virtue which has very specific categories which apply to particular cases and relationships. Looking at every component of Aristotle's justice, along with every implication, is a chore we shall leave to the ethicists. However, a thorough understanding of basic types of justice is necessary in order to correctly understand and apply the value. Using the derivative of justice which is appropriate to the case which one is debating is more correct than

using a general definition, improves one's ethos in the round, and can be a very effective way of narrowing the debate to very specific criteria.

As was stated in the previous analysis about the superiority of justice over other virtues, justice applies to a plurality of people, and is, therefore concerned with relationships. The following quote reveals the importance of this observation in Aristotelian theory and also explains the broadest two divisions of justice in Aristotelian thought.

> *** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1130b, 30-34.**
> "Of particular justice...one kind is that which is that which is manifested in distributions of honor or money or the other things that fall to be divided among those who have a share in the constitution...and another kind is that which plays a rectifying part in transactions."

First, note that in both categories of justice Aristotle emphasizes that they are relevant in relation to transactions between people, that is to say that justice does not exist, and cannot exist, without the interaction between people. A Hobbesian notion of justice which speaks of rights preceding society would make little sense in light of this analysis, in that Aristotle believed the state of nature to be a state of rational interaction, a state of society.

With this in mind, let us look at the two branches of justice that The Philosopher identifies. Those branches are, respectively, distributive justice and justice of rectification. Justice of distribution obviously deals with the standard by which goods ought be allocated in the community. It is interesting to note that the just distribution which Aristotle derives has been defended by Ayn Rand, a radical capitalist, but also has elements which are very similar to John Rawl's social theory, Rawls not being a capitalist by any standard. The reason for this disparity of uses will become more clear in a moment, but the author of this essay likes Aristotle a lot precisely due to his moderation on many issues.

In his distributive justice theory, Aristotle advocates a fair and equitable distribution, but, as aforementioned, his equality is decidedly not the type in which we all make the same amount of money, have the same size house, and the same kind of car. Rather, Aristotle derives equitable distribution as a geometrically proportional system. This sounds like an incredibly difficult theory to understand, but it is really fairly simple. Ratios are geometrically proportional, that is the number two corresponds to the number four in the same way that the number four corresponds to the number eight. The ratios are equal because each number increases in relation to its corresponding number. In other words, equality in justice, like geometrical proportions in math, demands not that parts be exactly equal to other parts, but rather that they be proportionally equal. Explaining all of this in the round of debate is not necessary or even advisable, though familiarity with the theory allows you to better understand the concept of distributive justice.

The concept of just distribution is derived above, as Aristotle derived it, but let us now apply that both in my words and those of the philosopher. All Aristotle means is that we should receive the goods that we are due, no more and no less, in accord with the concept of the mean. However, some are due more than others, and therefore some less than others in proportion with their relationship with other people and in proportion to their relationship with the goods to be distributed. If I work twice as hard as John at a job, I deserve twice the goods that John does. Indeed, Aristotle does support a merit based system of distribution, but one which is proportionately equal. If my efforts are twice as great as John's, I do not deserve ten times the goods. Aristotle describes this system in his own words:

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1131a, 15-28.**
"The just must be both intermediate and equal and relative (i.e. for certain persons)...the same equality will exist between the persons as the things concerned; for as the latter - [the things to be distributed] - are related so are the former; if they are not equal, they will not have what is equal...this is plain from the fact that awards should be according to merit; for all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit..."

The above explanation, in conjunction with previous analysis, should make Aristotle's conception of just distribution fairly clear. In relation to each other and to goods, people should get what they deserve, no more and no less. The problem with this explanation, and the reason that philosophers from Rand to Rawls apply elements of his theory, is that Aristotle never clearly and definitively explains who the agent of distribution should be. Is it the free market that shall determine merit and the correct proportion? Is it the government's role to decide this issue? Certainly, Aristotle would not condemn government intervention in economic matters, but nor does he advocate them.

Perhaps the best answer to this dilemma may be found, not surprisingly, in the text of Aristotle's work. The Philosopher speaks of what some call "the justice of exchange," though Aristotle really writes of this topic only in relation to reciprocal justice, one of his several more specific branches of justice. In the following passage Aristotle uses the relationship of two tradesman to defend money and, hopefully, to clarify the economic system which he would advocate.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1133a, 10-31.**
"The builder must get from the shoemaker the latter's work, and must himself give him in return his own. If, then, first there is proportionate equality of goods...[a just exchange] will be affected... It is for this end that money has been introduced, and it becomes... an intermediate; for it measures all things, and therefore the excess and defect - how many shoes are equal to a house or to a given amount of food. The number of shoes exchanged for a house [or for a given amount of food] must therefore correspond to the ratio of a builder to shoemaker. For if this be not so, there will be no exchange and intercourse."

Though this card may not be eminently useful in a debate round, it does further demonstrate Aristotle's application of the intermediate principal, and also allows us more insight as to his economic and social outlook. Aristotle counted on people in society to be rational. I would not trade something for something else of lesser value. This simple presupposition is still used as a defense of capitalism and a refutation of governmental economic intervention (see Milton Friedman's FREE TO CHOOSE or any capitalist dogma by Rand), but it is clearly oversimplified in reference to the complexity of today's economic systems. I am not denouncing Aristotle, or saying that he has no relevance in modern discussion, but am rather pointing out that equitable trades are harder to measure since the advent of multinational corporations, shareholder's meetings, and corporate takeovers. Aristotle simply felt that if everyone traded rationally and proportionately, justice would be served. Aristotle was not entirely confident that everyone would act justly and rightly, however. In fact, he presupposed that many would violate just principles of conduct, and based on that assumption, he formulated the second basic category of justice: Justice of rectification. The purpose of this branch of justice is to rectify, or correct, harms or injustices which have been perpetrated in society. If I steal money, and the courts make me give it back, that's rectificatory justice. This is, however, an incredibly inane oversimplification of Aristotle's principle of this type of justice. It is very important to understand the major differences between justice of distribution and justice of rectification, as these differences will dictate when each should be used in making moral judgments.

The first, and most obvious, difference, is that the former type of justice dictates the way in which goods ought be distributed in relation to people. The latter type of justice presupposes that distributive justice has already been violated; immorality and injustice have already been accrued, and the intent of rectificatory justice is to correct that violation. One type teaches people how to be moral, the other how to correct immorality.

The second, and less obvious, difference, is very important to comprehend. In the analysis of distributive justice, Aristotle speaks of geometrical proportions which involve the relationships between people and the goods to be distributed. In rectificatory justice, however, Aristotle derives geometric equality, which is not proportional and which examines only the harm itself and disregards the people involved entirely. No matter the character of the people involved or their just desserts, if one unjustly steals from another, the theft itself must be evaluated and corrected. Let us look to the big A for further clarification on this issue.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1132a, 1-10.**
"[Rectificatory justice] is a sort of equality indeed, and the injustice a sort of inequality; not according to [geometrical] proportion, however, but according to arithmetical proportion. For it makes no difference whether a good man has defrauded a bad man or a bad man a good one, nor whether it is a good or a bad man that has committed adultery; the law looks only to the distinctive character of the injury, and treats the parties as equal, if one is in the wrong and the other is wronged, and if one inflicted injury and the other has received it. Therefore, this kind of injustice being an inequality, the judge tries to equalize it; for in the case also in which one has received and the other inflicted a wound...the suffering and the action have been unequally distributed; but the judge tries to equalize things by means of the penalty, taking away from the gain of the assailant."

The length of the above card is necessary to provide a clear understanding of justice in the matter of reciprocation. Simply, Aristotle maintains that the action of injustice must be evaluated irrespective of the characters of those involved in the dispute. His further analysis expounds upon the idea of equality, which is developed initially in the above passage. If one inflicts a harm upon another, Aristotle maintains that it is just to rectify the matter by "equalizing" the harm. The arithmetic nature of this equalization is quite close to the idea of reciprocity. If I steal twenty dollars, that is the amount that I should justly lose, or I should suffer another penalty which is equal in harm to that loss, thereby equalizing the crime. However, it should be clarified that the reciprocal nature of this type of justice extends only to monetary and other social transactions, not to punishment for causing physical harm to another. In other words, Aristotle does not believe in the "eye for an eye, tooth for a tooth" doctrine. However, reciprocity does play a role in justice. Remember the aforementioned analysis that in a free society, men should trade services equally. That is reciprocity, but it is in a positive rather than a negative vein. If you do me a good, then I should return that good; in other words, reciprocate it.

The final concept of justice which we are going to examine in this admittedly abbreviated look at Aristotle is a logical predecessor to the next work we will examine. Aristotle maintains that we must seek not only unqualified justice, but also political justice specifically. Aristotle claims that political justice occurs when men associate freely and maintain equality proportionately or geometrically, depending upon the type of justice being pursued in the situation. In other words, a society is just if it fulfills, on a societal level, the criteria for justice already enumerated. However, Aristotle does emphasize the importance of law in relation to justice, making clear that laws are essential to a fair society and to an objectively just one.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1134, 29-35.**
"Justice exists only between men whose mutual relations are governed by law; and law exists for men between whom there is injustice; for legal justice is the discrimination of the just and the unjust...we do not allow man to rule but law, because a man behaves...in his own interests and becomes a tyrant."

Law, then, to Aristotle, is a means by which we can prevent tyrants from taking too much, or more than their due. This is very clearly a defense of a modern constitutional government, in which everyone, whatever their status, must obey objective norms of justice. It also explains how Aristotle hopes to implement the virtues he describes in the first books of ethics, as he believed just laws would enforce justice, promote virtuous behavior, discourage vice, and do virtually everything else nice. A common criticism is that he does not deal with the question of a citizen's recourse if a law is patently bad.

In defense of Aristotle, he does clarify the issue somewhat by explaining that natural law holds justice in esteem in equal part with human laws. He explains this balance in the following passage.

*** Aristotle, Nicomachean Ethics, Translated W.D. Ross, 1134b -, 1135a.**
"Of political justice part is natural, part legal - natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it is laid down is not indifferent...the things which are just not by nature but by human enactment are not everywhere the same, since constitutions are not the same, though there is but one which is by nature the best. Of things just and lawful each is related as the universal to its particulars..."

Aristotle, therefore, held that although human laws could differ in their enactment and word, they ought still reflect the natural laws of justice. In this manner, laws could be different, but not necessarily better or worse, for as Aristotle points out, there is only one truly perfect law. Every other law is merely some degree of bad or good. As long as human law seeks the intermediate of justice, in its various forms, and pays heed to natural law, the law will tend toward the fair and just.

Though much more worthwhile philosophy may be found in the remainder of this work, and in the sections we have discussed, the analysis thus far presented is sufficient for a thorough introduction to Aristotle's ethical thought. We now turn our attention to the second major body of Aristotle's moral thought, that which is found in his *Politics*. Because of the prioritization of Aristotle's above work in relation to L.D., and due to limited space and your probable lack of interest, less attention will be paid this second work than was paid to the first. This is not to take away from Aristotle's political thought; perhaps at a later date Victor will pay me for a more intensive study of this work (write him!).

As was discussed above, justice plays a key role in politics, and the use of political justice in political debate is certainly valid. This is not the concept with which Aristotle begins his treatise on political thought, however. Rather, he claims that the best way to gain a clear picture of something is to look at its origin, thus he turns to the origin of the political society and state. Aristotle's conception of the state's beginning is incredibly important to understand clearly, in that it differs dramatically from many modern conceptions of the state's origin. He held that man, by his very nature, is political and social, and that the state was created naturally. In other words, there can be no conception of the human being as an autonomous agent, nor of a natural state which does not presuppose a state of society. Social contract theorists, such as Locke, Hobbes, and Rousseau, held that there could in fact be at least a hypothetical state preceding society. Aristotle's theory contradicts this proposition, however, and maintains that man's natural state IS a political one. Even theorists like Rawls, who advocate that we merely attempt to be objective bystanders, would have problems in that Aristotle would maintain that humans can never

perceive any viewpoint other than one influenced by social and political ties. Thusly, Aristotelian thought often plays havoc with social contractual theory.

Why does Aristotle believe that man is such a political animal? Primarily, because the human being cannot and could never have existed without some social structure. At the very least, we are all dependent upon the family for survival, and the family upon the community, and the community upon the state. Accordingly, humans cannot be conceived of without reference to others. The following two cards serve to clarify and promote Aristotle's view.

*** Aristotle, Politics, Translated Benjamin Jowett, 1253a 1-3.**
"...it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either a bad man or above humanity..."

*** Aristotle, Politics, Translated Benjamin Jowett, 1253a 25-31.**
"The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self -sufficing; and therefore he is like a part in relation to the whole. But he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god: he is no part of a state. A social instinct is implanted in all men by nature..."

Upon laying this foundation, Aristotle begins his formulation of various interesting political themes, many of which are simply not worth discussing in a handbook geared toward the application of philosophy in Lincoln Douglas debate.

The above theory is incredibly important, in that it can be a fantastic criticism of much modern contractual and otherwise political theory. However, Aristotle's derivation of slavery as naturally just is not going to win the hearts of many judges. Likewise, his analysis on property accumulation through monopolies and other methods is not generally applicable. Such analysis could have specific uses and is a good read, but the purpose of the remainder of this essay is to mention several of the more applicable Aristotelian areas of political thought.

Aristotle attacks the notion of communal ownership and communal living, responding to Plato's defense of these principles in his *The Republic*. Aristotle maintains that if everyone owns something, then no one truly owns it and a bad result will be accrued. The following clarifies...

*** Aristotle, Politics, Translated Benjamin Jowett, 1261b 33-38.**
"For that which is common to the greatest number has the least care bestowed upon it. Everyone thinks chiefly of his own, hardly at all of the common interest; and only then he is himself concerned as an individual."

Due to this analysis of human nature, as well as to Aristotle's later defense of the private interest, he concludes that most property ought be held privately. Aristotle deals with the specifics of various other arguments, then turns to a discussion of the state's purpose. The conclusion is that the state ought work for the common interest, rather than any particular private interests. This pursuit obviously differs from the above defense of the private interest, revealing the difference in individual goals, and the goals of the state. Further, he held that while pursuing the common interest, the state must also remain within the rigid confines of justice.

*** Aristotle, Politics, Translated Benjamin Jowett, 1279a 17-30.**
"...governments which have a regard for the common interest are constituted in accordance with strict principles of justice, and are therefore true forms...but governments which rule with a view to the private interest, whether of the one, or the few, or the many, are perversions..."

Aristotle goes on to look at democracy, oligarchy, aristocracy, and various other forms of government, giving all a thorough critique, pointing out various problems with each. A common theme throughout these criticisms is the desire on the part of most populaces to formulate a government which maintains the principle of equality, in relation to justice (Much of his analysis here refers back to *Ethics*, in which he developed equitable conceptions of justice.). Democracy, for example, seems to promote equal political rights, but what if the majority are poor and decide to strip the wealthy of their fairly earned wealth? According to Aristotle, this is clearly a violation of just equality, as he points out. He maintains that the just society is one in which the few rule within the confines of just law and for the common interest, though those few must be democratically chosen.

This basis is explained below in relation to liberty..

*** Aristotle, Politics, Translated Benjamin Jowett, 1137b 1-20.**
"The basis of a democratic state is liberty; which according to the common opinion of men, can only be enjoyed in such a state - this they affirm to be the great end of democracy. One principle of liberty is for all to rule and be ruled in turn...and so it contributes to the freedom based upon equality. Such being our foundation and such the principle from which we start, the characteristics of democracy are...the election of officers by all out of all and that all should rule over each, and each in turn over all..."

This principle is in accord with Aristotle's previous conceptions of justice, in direct relation to equality. Much of the remainder of *Politics* deals with the formation of the state regarding location, trade, size, population, and other topics which do not seem germane to debate theory. While the above review of *Politics* is by no means whatsoever complete or comprehensive it will suffice as an introduction to LD uses of Aristotle's political theory.

Aristotle is a complex philosopher, made more so by his incredibly diverse number of subjects. This should not, however, discourage his use in debate, as he has much of value which can be readily applied. I hope this introduction serves to encourage your use of The Philosopher, and that he serves you well. Good luck on the circuit, perhaps I'll judge some of you sometime. If so, I will vote on Aristotle paradigms unless you can figure out a cool way to run Nietzsche or any card citing Mark Price, both of which will earn an instant ballot in your favor.

Judicial Activism
by Priya Aiyar

When the authors of the Constitution designed our national government, they created the legislature as the first branch, the executive as the second, and the judiciary as the third and, in Alexander Hamilton's words, "the least dangerous branch." Perhaps the framers should have heeded the Biblical warning that "many that are first shall be last ; and the last shall be first." From Marbury v. Madison through Roe v. Wade, the Supreme Court has steadily expanded its power. Judicial activism, the exercise of Court authority when not strictly required by the Constitution, is now a significant force within our political system. By examining the justifications for and objections to court activism and surveying examples of influential courts, we can come to some conclusions regarding the desirability and validity of judicial activism.

First, we need to define judicial activism and distinguish it from judicial review. Court activism involves loose interpretation of the Constitution and decisions rendered based on the needs and values of contemporary society. While the doctrine of judicial review simply allows for the revocation of laws which are definitively unconstitutional, judicial activism goes one step further, enabling judges to shape law through application of their knowledge of society and ideas of natural right.

To understand judicial activism, we must examine the constitutional origins of its precursor, judicial review. The role of the Supreme Court is imperfectly and vaguely defined in the Constitution; the framers neither explicitly granted nor explicitly forbade the power of judicial review. Extending this idea, scholar Leonard Levy points out:

> **Leonard Levy, quoted by Raoul Berger, Government by Judiciary, Harvard University Press, 1977, p. 53**
> The charge of [judicial] usurpation most certainly cannot be proved; it is without merit. The difficulty is that the legitimacy of judicial review in terms of original intent cannot be proved either.

There has historically been much debate over whether judicial review is constitutionally warranted. Thomas Jefferson, for example, raised many valid objections to judicial review. He stated that each branch of government was equally independent, and each should be able to interpret for itself the meaning of the Constitution, checked, of course, by the other two branches. Jefferson claimed that if the judiciary were allowed to examine and nullify the acts of the legislature and executive, then the legislature and executive should also be allowed to nullify acts of the judiciary. In fact, in a democracy there is greater justification for placing the power of review in the executive or legislative branches, since they represent the people most directly. Jefferson thus held that judicial review was inconsistent with the Constitution.

Another well-thought-out attack on judicial review was made in 1860 by New York Congressmen Roscoe Conkling, as a reaction to the Court's 1857 Dred Scott decision. Conkling attempted to prove that the framers did not intend the Court to revise policy; for evidence, he relied principally on the Constitutional Convention's rejection of the Council of Revision, a judicial-executive body which would have been able to veto Congress' policies on the grounds that they were unconstitutional. Conkling also argued that the framers, noted for their fear of unchecked power, would never have given the Court, the one political entity that is basically independent of the people, ultimate authority in legislative matters. Additionally, of the three branches of government, the judiciary was the only one which was not defined by the Constitution in terms of the number of its members and their qualifications. Conkling maintained that the

framers would not have conferred a power so immense as judicial review upon such a vaguely characterized government body.

Most constitutional scholars, however, have concluded that the framers did anticipate and provide for judicial review. Judicial review had been part of English common law and various state constitutions since well before 1787; it was an accepted aspect of the English-American political tradition. Article III, section 2 of the Constitution gives the judiciary power in all cases "arising under the Constitution"; thus, it leaves constitutional questions to be decided by the courts. Article VI, section 2 states that "This Constitution . . shall be the supreme Law of the Land; and the Judges . . shall be bound thereby." Again, the responsibility of upholding the Constitution is given to the courts. Also, the framers' emphasis on checks on legislative power and protection of minority rights would lead them to support judicial review. In fact, many of the Founders openly advocated judicial review, and of those who did not, only Jefferson definitively opposed it. From these various bits and pieces of evidence, we can reasonably infer the power of judicial review.

However, the question of whether judicial review is indeed grounded in the Constitution is now in some ways irrelevant. Judicial review has legitimized itself, not through appeals to constitutional scholarship, but through the fact that it has become generally accepted. As the Court asserted its supremacy in decision after decision, from Marbury v. Madison on, judicial review "became a part of our unwritten Constitution" (Henry Steele Commager, Majority Rule and Minority Rights, Oxford University Press, 1943, p. 37). America has acquiesced to Court power because it has proven beneficial and even essential ; as Harvard Law professor and former Solicitor General Archibald Cox explains:

> **Archibald Cox, The Role of the Supreme Court in American Government, Oxford University Press, 1976, pp. 29-30**
> The doctrine of judicial supremacy and the people's attachment to this form of constitutionalism drew their principle sustenance from the rich soil of necessity. Without a supreme expositor upon the constitutional distribution of power and popular acceptance of its decisions, the enterprise upon which the American people launched themselves in the Constitution could hardly have survived. With the Court as expositor the system worked so well that history legitimated the power, and then habit took over to guide men's actions so long as the system worked well enough.

Cox tells us that American government needs some type of constitutional review, and that the Court has effectively served as the instrument of review. Judicial review has become so entrenched in the American political scheme that, as Henry Commager declares, "We cannot overturn [it], even if we would." (Commager p. 38). Judicial activism, on the other hand, has by no means been accepted; it is a relatively new phenomenon which is currently the subject of much dispute. Our next step, then, is to inquire into the legitimacy of judicial activism.

The question of whether judicial activism has a defined constitutional basis is answered relatively easily. Even if we assume that the framers did intend to confer the power of judicial review, there is no indication that they approved of or even anticipated judicial policy-making. Even Alexander Hamilton, a supporter of judicial review, assumed that the courts would remain "beyond comparison the weakest of the three departments of power." (Alexander Hamilton, quoted by Robert Bork, The Tempting of America, Collier Macmillan Publishers, 1990, p. 154). He wrote in The Federalist, No. 78:

Alexander Hamilton, quoted by Malcolm Richard Wiley, Activism by the Branch of Last Resort, National Legal Center for Public Interest, 1884, p. 4
To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them.

James Madison also acknowledged the dangers of excessive judicial power, quoting Montesquieu in The Federalist, No. 46:

Baron de Montesquieu, quoted by James Madison, quoted by Wiley, Activism by the Branch of Last Resort. National Legal Center for Public Interest, 1884, p. 3
Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

The role of the judiciary was strictly limited to policing constitutional limits; the Court was simply to act as a vetoer, a "nay-sayer", not as an initiator of policy. The framers allowed the judiciary to prevent legislative encroachment of power, but not to revoke laws, destructive or threatening though they might be, made within the jurisdiction of the legislature. As former Harvard professor Raoul Berger explains:

Berger, Raoul, Government by Judiciary. Cambridge: Harvard University Press, 1977, p. 304-5
No one, so far as my search of several convention records uncovered, looked to the Court for leadership in resolving problems that Congress, the President, or the States failed to solve. That view is a product of post-Warren euphoria.

The framers rejected the concept of `judicial guardians', judges acting to spur social reform and justice; they preferred to vest their trust in the representatives of the people. As Wayne State University law professor Robert Sedler, paraphrasing his colleague Professor Grano, explains:

Robert Sedler, "The Legitimacy Debate", Ohio State Law Journal Vol. 44:93, 1983, p. 85
[Grano] maintains that while "considerable evidence exists that the framers expected the judiciary to declare legislation unconstitutional," it cannot be demonstrated that the framers intended the judiciary to have the broad authority to invalidate legislation by invoking nonpositivistic moral law.

When evaluating judicial activism, however, we need to look not merely at framers' intent, but also at this doctrine's influence in society. Perhaps the strongest support for judicial activism is provided by the argument that an active Court is necessary to preserve minority rights and justice through the application of a higher, natural law. A deep commitment to natural law and natural right runs throughout the American tradition. American political theory is based upon two conflicting principles; it values self-government and majority rule, but it asserts that the majority cannot be allowed to violate the rights of individuals. The perpetual tension between these competing claims fosters constant disputes which, historically, have been resolved by the courts. As professor Robert Steamer declares:

Robert J. Steamer, The Supreme Court in Crisis, The University of Massachusetts Press, 1971, p. 282
The Supreme Court has been and is the medium for accommodating rule by the people with the rule of law.

In our tripartite national government, the legislature and the executive represent the voice of popular sovereignty; the Supreme Court must act as the voice of natural law. There is evidence that the framers perceived this necessity and intended the Court to apply natural law in rendering its decisions. The framers did believe that minority rights were of paramount importance; judicial activism, then, could be justified in terms of original intent.

Critics of judicial activism claim that allowing judges to decide issues of natural law essentially gives the Court unchecked power. Ideas of natural right are vague and subjective, and giving justices free rein in the application of these ideas would allow them to "[disguise their] individual opinions and [give] them the sanction and prestige of a supreme fundamental law." (Howard J. Graham, Everyman's Constitution, quoted by Berger p. 254). Scholars argue quite persuasively that if the Court were given this type of absolute interpretive power, our written Constitution would become meaningless.

These scholars also claim that allowing judicial activism would deny democracy by forcing the views of an elite on the American people. Judge Learned Hand eloquently expressed his dislike of rule from the bench:

Judge Learned Hand, quoted by Cox, The Role of the Supreme Court in American Government. New York: Oxford University Press, 1976, p. 116
For myself it would be most irksome to be ruled by a bevy of Platonic Guardians . . If they were in charge, I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs.

Historically, the court has often denied majority morality, not because of strict constitutional scruples, but because the opinions of the intellectual elite ran the other way. In this way, the Court which invalidated regulation aimed at protecting workers is indistinguishable from the Court which struck down abortion laws. Many would argue that these court actions were in no way legitimate, and that the ultimate word on issues which are not resolved by the Constitution ought to rest with the people, rather than with a group of nine `saviors' or `guardians'.

Responding to these accusations, those with activist opinions claim that a powerful Court actually enhances our democracy by acting as an umpire among our branches of government. Judicial review requires the Court to resolve the constant conflicts between different branches engendered by our complex political structure. An activist court better fulfills this function; as professor Richard Neely states:

Richard Neely, How the Courts Govern America, Yale University Press, 1981, p. xiii
[the activist Court] has evolved . . into an engine for alleviating the more dangerous structural deficiencies of the other institutions of democratic government.

Furthermore, allowing the Court to make final decisions does not undermine citizens' involvement in democracy. In modern, large-scale government, individuals feel no more of a sense of participation in the legislative process than the judicial. The Supreme Court's intervention, then, does not actually lessen the individual's role in the democratic system.

The next issue that we are faced with is the question of whether the Court should act as a legislative entity and a vehicle for social reform. Proponents of court activism use the concept of natural law to "legitimate for the public and perhaps even for the judge a measure of constitutional adjudication as an instrument of reform" (Cox p. 112). They argue that the judiciary often is able to right social problems that the other two branches of government were reluctant or unable to deal with. Historical precedent appears to prove that, according to liberal, humanitarian standards, judicial activism has been a positive societal force. Archibald Cox articulates this opinion:

Cox, The Role of the Supreme Court in American Government. New York: Oxford University Press, 1976, p. 115
Without constitutional adjudication not sanctioned by the strict judicial method, we should still be tolerating a caste system and suffering the inequity of legislative malapportionment. The press would be constrained by fear of suits for libel..in publishing discreditable news of public figures ; and in some states, poor persons charged with crime would still be forced to trial without the assistance of counsel. These are not matters to which Congress or state legislatures would attend.

Furthermore, a majority of Americans have come to favor and accept court reforms which nonetheless could not have been achieved through normal, democratic means; for example, while Congress refused to legislate desegregation, reapportionment or reform of abortion laws, Gallop polls indicated that the public supported Court decisions in all of these areas (Neely p. 13). Advocates of judicial restraint respond to this point with the objection that such changes could be made by representatives, through constitutional amendment, rather than by the judiciary. But, as Judith A. Baer states:

Judith A. Baer, "The Fruitless Search for Original Intent", Judging the Constitution, edited by Michael McCann and Gerald Houseman, 1989, p. 65
But this common objection is far from persuasive. The amending process, useful as it is, is cumbersome..Indeed, it is possible that the events leading up to the Civil War indicate that the likely alternative to judicial flexibility is not peaceful constitutional change. As Joseph Tussman and others have argued, judicial activism may be an effective alternative to revolution and violence that advances justice.

Spurred by this type of evidence, many academics argue that judges should be sensitive to emerging societal needs and forces in rendering their opinions. Since constitutional clauses are purposely ambiguous and allow scope for interpretation, judges inevitably assume the responsibility of fashioning law to fit future circumstances:

Robert G. McCloskey, The American Supreme Court, 1960, p. 15
Conceived in ambiguity as well as liberty, [the Constitution] could never escape that legacy. The framers had said in effect, with respect to certain questions, some of them very momentous, the Constitution means whatever the circumstances of the future will allow it to mean.

Baer, "The Fruitless Search for Original Intent." Judging the Constitution, edited by Michael McCann and Gerald Houseman, 1989, p. 64
John Marshall's insistence that "it is a constitution we are expounding" is a reminder that constitutions, meant to endure for generations, are written in general, flexible language so that they may bear general, flexible interpretations: They are not meant to be legal codes where every point is spelled out.

Chief Justice William Rehnquist, quoted by Baer, "The Fruitless Search for Original Intent." Judging the Constitution, edited by Michael McCann and Gerald Houseman, 1989, p. 51
Where the framers of the Constitution have used general language, they have given latitude to those who will later interpret the instrument to make that language applicable to cases that the framers might not have foreseen.

Even the somewhat conservative Justice Felix Frankfurter believed that judges should not be bound by strict original intent and simple historicism:

Justice Felix Frankfurter, quoted by Philip B. Kurland, Politics, the Constitution, and the Warren Court, The University of Chicago Press, 1970, p. xv
Humility, painstaking solicitude for the ascertainable feelings and needs of present-day society, the imaginative effort to reconcile competing claims....these are the qualities without which constitutional law is a system of pernicious abstractions instead of the governance of a teeming continent.

While critics believe that justices who creatively interpret constitutional clauses in terms of new situations are merely reading their own opinions into the fundamental national law, Judith Baer disagrees:

Baer, "The Fruitless Search for Original Intent." Judging the Constitution, edited by Michael McCann and Gerald Houseman, 1989, p. 65
Judges who interpret the constitutional test to include postconstitutional values are not simply writing into law their own opinions. The ideas judges use will, of course, be theirs, since judges, like the rest of us, have only their own minds to think with. But a person's "own" ideas do not spring newborn from his or her mind. Ideas are drawn from the currency of discourse present in the surrounding society or available from the past. A jurisprudence that goes beyond past ideas to include newer ones incorporates the values not only of the framers but also of the intervening generations and the present. Any or all of these ideas may be wrong, unjust, or incomplete. But surely that risk is preferable to a limited approach that ensures that the errors of the past will be frozen into law beyond correction.

However, there are several factors which lead us to question the legitimacy of the Court's role as an instrument of legislation and reform. First, this role is clearly not in accordance with the original, constitutional perception of our scheme of government. Many justices have proclaimed that the Court was never intended to act as an initiative or legislative body:

Justice Holmes, quoted by Berger p. 384
I do not expect nor think it desirable that the judges should undertake to renovate the law. That is not their province.

Justice Black, quoted by Kurland, Politics, the Constitution and the Warren Court. Chicago: The University of Chicago Press, 1970, p. 4
[the Court should] leave the problem of adapting the Constitution to meet new needs to constitutional amendments approved by the people under constitutional procedures.

Also, it can be argued that the Court has not promoted constructive reform. Legal scholar Robert J. Jackson states:

Robert J. Jackson, quoted by Berger p. 331
Time has proven that [the Court's] judgment was wrong on most of the outstanding issues upon which it has chosen to challenge the popular branches.

There is a wealth of historical evidence to support this view; the Court failed in its position as our `national conscience' when it set a horrific precedent for racial concentration camps in the Japanese relocation case and refused to fully enforce the protections guaranteed to blacks under the Fourteenth Amendment. Granted, courts such as the one led by Chief Justice Earl Warren did instigate much beneficial change. However, as Leonard Levy warns:

Leonard Levy, quoted by Berger, Government by Judiciary. Cambridge: Harvard University Press, 1977, p. 332
A single generation's experience with judicial review...does not wipe out the experience of a century and a half.

Even though many critics grant that the overall influence of Court-based reform has been positive, they still claim that judicial activism is not acceptable. Agreeable results, they argue, do not legitimize undemocratic procedures. Those who attempt to justify judicial usurpation on the grounds that there is no other means to deal with a given social problem are in effect espousing the Machiavellian philosophy of the end justifying the means. Anti-activists such as the well-known political theorist Alexander Bickel believe that we should not sacrifice procedural justice and our fragile democratic system to temporary ideals of substantive justice:

Alexander Bickel, quoted by Bork, The Tempting of America. London: Collier Macmillan Publishers, 1990, p. 132
It is the premise of our legal order that its own complicated arrangements . . are more important than any momentary objective.

J. Grossman and R. Wells, quoted by Christopher E. Smith, "Supreme Court Legitimacy", Kentucky Law Journal Vol. 79, 1990- 91, p. 325
The primary and proper justification of decisions, so the argument goes, is one of procedure and method, of means and not ends. The strength, and ultimately the legitimacy, of law and the courts lies in the establishment and application of fair predictable procedures, not in producing any particular result.

Attorney General William French Smith, quoted by Wiley, Activism by the Branch of Last Resort. National Legal Center for Public Interest, 1884, p. 2
Throughout history and to this day both liberal and conservative interests have sought to enlist an activist judiciary in the achievement of goals not obtainable through normal political processes...The evils of judicial activism remain the same regardless of the political ends the activism seeks to serve.

Malcolm Richard Wiley argues that political goals should be achieved through the executive and legislature, and that judicial activism disrupts the balance of power between the three branches of government:

Wiley, Activism by the Branch of Last Resort. National Legal Center for Public Interest, 1884, p. 2
I suggest that insofar as the so-called legal realists advocate this form of judicial legislation, they have confused ends with means. Within our constitutional system, the appropriate means for achieving political goals are through action by Congress and the Executive.

Wiley, Activism by the Branch of Last Resort. National Legal Center for Public Interest, 1884, p. 3
To the extent that judges have acted in accord with this confusion of ends and means, we have spawned a pernicious "judicial activism" which has disrupted our well-designed constitutional balance of separation of powers..Furthermore, this pernicious "judicial activism" has been caused by and has itself further encouraged evasion of responsibility by the Legislative and Executive Branches.

The statement that judicial activism distorts the intricate structure of our political system simply to gain desired results is powerful and convincing. However, one of the strongest responses put forth by supporters of activism is their insistence that the scenario of judicial tyranny described by their opponents is highly unrealistic. Regardless of the extent of the license which we give our justices, Court power is still inherently checked by the executive and legislative branches. The Court possesses neither the purse nor the sword ; it can issue decrees, but it does not have the means to enforce them. The Court is completely dependent upon the compliance and cooperation of both the two other arms of government and the public. As Archibald Cox declares:

Cox, The Role of the Supreme Court in American Government. New York: Oxford University Press, 1976, p. 7
Constitutionalism as a constraint upon government depends upon the habit of voluntary compliance.

According to Robert G. McCloskey, the Court has remained and must remain responsive to public sentiment and other political forces:

McCloskey, The American Supreme Court. 1960, p. 15
..the mandates of the Supreme Court must be shaped with an eye not only to legal right and wrong, but with an eye to what popular opinion would tolerate.

McCloskey, The American Supreme Court. 1960, p. 225
..the Court seldom strayed very far from the mainstream of American life and seldom overestimated its own power resources. To put this thing in a different way, the Court learned to be a political institution and to behave accordingly.

Historically, Court decisions have been accepted when they were in accordance with the general will and defied when they ran contrary to the wishes of the country. Examples of executives who maneuvered around unpopular court rulings include President Lincoln, who disregarded habeas corpus, and Franklin D. Roosevelt, who forced the Court to accept his New Deal Program.

Furthermore, the Court can always be checked through constitutional amendment. The fact that this has happened so rarely is in many ways a tribute to the wisdom of most judicial decisions. The impeachment of irresponsible justices along with the political techniques practiced by Roosevelt are examples of other

available means of reversing unpopular decisions. Clearly, judicial influence, when exercised poorly, can be and has been curtailed.

Now that we have a grasp of the arguments for and against judicial activism, we can test these theories and opinions by applying them to specific historical examples. By studying the effects of active Courts, particularly the New Deal Court and the Warren Court, we can better evaluate judicial activism.

The New Deal Court consisted of four strict nineteenth-century liberals or economic conservatives (Sutherland, Butler, Van Devanter and McReynolds), two less rigid conservatives (Chief Justice Hughes and Owen Roberts) and three new-style liberals (Brandeis, Cardozo and Stone). Legislation passed during this period repudiated classical economic beliefs and was opposed by the Court's conservative bloc. The Court struck down many New Deal laws on the grounds that they infringed upon the right to liberty of contract, which the justices read into the Fifth and Fourteenth Amendments. Franklin Delano Roosevelt finally openly challenged the Court, declaring that the justices were "old men [who], assuming that the scene is the same as it was in the past, [had ceased] to explore or enquire into the present or the future." (Steamer p. 210). The President attempted to force passage of a bill which would allow him to appoint up to six additional justices and stack the Court. While this bill was rejected, Roosevelt had sufficiently intimidated the justices; they immediately adopted a policy of restraint and upheld New Deal legislation. This episode was crucial because it marked the first public admission that judges were not politically neutral, and that the Supreme Court was an institution subject to political pressure.

Many historians now agree that the New Deal Court's decisions were wrong, and that the Court's stifling of majority will to preserve a right which is not mentioned in the Constitution was not socially desirable. The effects of the New Deal Court, then, can be construed as proof that an assertive Court can deny the interests of the majority and thwart the welfare of the nation. Some scholars, though, disagree with this judgment. Constitutional expert Laurence H. Tribe states:

> **Laurence H. Tribe, "The Final Say," The New York Times Magazine, September 13, 1987, p. 72**
> ..[the example of the New Deal] Court in no way proves that judicial activism as an institution ill-served the nation. If the Court's earlier review of legislation seemed to impede social and economic progress, the later review was the vehicle through which social-welfare legislation finally established its legitimacy.

Studying the Roosevelt Court leads us to conclude that judicial activism can have temporary negative effects. However, these effects will be overcome by the other branches of government, and their existence does not dejustify activism, as Tribe explains.

To better assess judicial activism, we need to examine this nation's most blatantly activist Court, the Warren Court. This Court, headed by Chief Justice Earl Warren, based its decisions more on moral imperatives and sociological evidence than on legal doctrines. Alexander Bickel provides us with an accurate and incisive, although rather polemical, description of the Warren Court:

Alexander Bickel, quoted by Bork, The Tempting of America. London: Collier Macmillan Publishers, 1990, p. 132
..the Warren Court got over doctrinal difficulties..by asking what it viewed as a decisive practical question: if the Court did not take a certain action which was right and good, would other institutions do so, given political realities? The Warren Court took the greatest pride in cutting through legal technicalities, in piercing through procedure to substance.

There is no doubt that many of the Warren Court's decisions on cases involving school desegregation, reapportionment and criminals' rights were not justified in terms of constitutional intent. The effects of these decisions, though, were generally positive; by the 1950's, the Court had become a staunch defender of individual liberty, acting to preserve equal opportunity, freedom from oppressive majorities, freedom from the arbitrary action of government officials and freedom of speech and expression. It is also clear that these types of reforms would not have been instigated as effectively by the other branches of government ; for example, while equality for blacks might have eventually been provided by the legislature, it was achieved much more quickly through the Court system.

The question of whether these admirable results legitimized the Warren Court's actions is not easily resolved. It is important to remember that while the Warren era represents a situation where activism was beneficial, activism could also have led to negative consequences. Many of the same liberals who applauded the Warren Court condemned the New Deal Court, when the justices during these periods were in reality acting upon the same principles; both Courts were attempting to uphold individual liberty contrary to majority will. Raoul Berger underscores this hypocrisy:

Berger, Government by Judiciary. Cambridge: Harvard University Press, 1977, p. 312
Why did the libertarians, after decades of berating the Court for reading its laissez-faire predictions into the Constitution, turn around and defend it for pursuing the same course with respect to libertarian values?

Judicial activism can have both positive and negative social results, and it is difficult to objectively determine the overall effects of court involvement. The debate over the desirability of activism has become even more prominent recently, especially in regard to the controversial nomination of David Souter to the Supreme Court. Souter disregards partisan politics and is a true judicial conservative; he sticks to narrow interpretation and "black-letter law". Many liberals fought against Souter's appointment, believing that he would act to overturn rulings such as Roe v. Wade on the grounds that they were not constitutionally required. While the dispute over Souter centered around particular political issues, many heralded the Souter nomination as a first step towards the de-politicization of the Supreme Court. As The Economist stated:

"An old-fashioned judge," The Economist, July 28, 1990, p. 19-20
..it is not too late to think of the court as a forum where law and not politics rules; not too late to stop the mindless habit of analyzing whether every utterance by any justice can be slotted into a "liberal" or a "conservative" column . . In Mr. Souter, a New Englander and a man of habits so old-fashioned they appear to be almost Neanderthal (the man reads books, for heaven's sake, and rambles round New Hampshire's mountains) there is a sense of return to an older America, and not a worse one.

While factional courts can be undesirable, conservative courts are often as politicized as activist courts. The problem of overly political courts, then, cannot be blamed upon judicial activism. Rather, it results

both from the inherently factional nature of our government's structure and from the means, namely the two-party system, that we have chosen to actualize this structure. The question of whether the Court should play a partisan role should therefore not be linked to the issue of judicial activism.

After studying judicial activism in several different contexts, we have seen that it has had and will continue to have both beneficial and harmful social consequences. On balance, though, we can conclude that judicial activism is a valid and positive influence within our society. Theoretical analysis and historical evidence indicate that justices need to apply higher moral and political principles in their decision-making.

To establish the case for activism, we must lay down some basic tenets of constitutional adjudication. First, courts cannot and should not be expected to interpret the Constitution strictly in terms of original intent; the framers themselves did not desire this. Furthermore, Judith Baer explains that original intent is unknowable:

Baer, "The Fruitless Search for Original Intent." Judging the Constitution, edited by Michael McCann and Gerald Houseman, 1989, p. 59
So, no jurisprudence of original intention is possible, because original intention is undiscoverable. We can and should go back to the primary sources to learn about the origins of the Constitution, but the past is something we can only learn about and learn from, not learn per se. The records are too incomplete, and the nature of law-making too imprecise, to enable us to discover original meaning.

Baer, "The Fruitless Search for Original Intent." Judging the Constitution, edited by Michael McCann and Gerald Houseman, 1989, p. 62
We cannot determine whether original intention exists. Philosophy of language theories reinforce the rejection of the premise that original intent is knowable.

Also, if justices were restricted to intent-based interpretation, many noble goals such as economic security and racial equality could never have been achieved. Judges clearly need to consider new social values and priorities in making their decisions. Critics argue that this allows judges to impose their own beliefs and standards upon society. However, the Court cannot effect its rulings without the cooperation of the people and the other two branches of government. As Richard Neely explains:

Neely, How Courts Govern America. New Haven: Yale University Press, 1981, p. 217
..limits on court power in government are set by the tolerance of countervailing powers.

The Court's decisions will not be accepted or enforced unless society is ready and willing to abide by those decisions. The activist Court, then, acts as sort of national conscience; it expresses its conception of the general will but must rely upon citizens to actually fulfill its vision. Archibald Cox perhaps phrases it best:

Cox, The Role of the Supreme Court in American Government. New York: Oxford University Press, 1976, p. 118
The Court must know us better than we know ourselves. Its opinions may . . remind us of our better selves. But while the opinions of the Court can help to shape our national understanding, the roots of its decisions must already be in the nation. The aspirations voiced by the Court must be those the community is willing not only to avow but in the end to live by. For the power of the great constitutional decisions rests upon the accuracy of the Court's perception of the common will and upon the Court's ability, by expressing this perception, to ultimately command a consensus.

Past Supreme Courts such as the Warren Court have successfully played the role of the national conscience, persuading America to adhere to the substance, not just the letter, of its Constitution. While there are also examples of courts such as the New Deal Court which wrongly thwarted majority will through their assertiveness, these justices' power was eventually curtailed by the rest of our government. Judicial activism generally serves to improve our society, and in those situations where this is not true, judicial power is inevitably checked and court decisions are not implemented. Activism, then, does not threaten the security of our political scheme; it tends to be a positive force and can be overcome when it acts as negative force.

American government is based on two competing principles, the principles of majority rule and minority rights, of rule by the people and rule by law. The Supreme Court serves as an arbiter, reconciling these conflicting claims. Without a strong and active Court, our democracy could easily degenerate into a tyranny of the majority. As Alexis de Tocqueville declared over a century and a half ago:

Alexis de Toqueville, Democracy in America, Knopf, 1948, p. 103
..the power vested in American courts forms one of the most powerful barriers that have ever been devised against the tyranny of political assemblies.

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The Power of Philosophy
by Djeph Shaw

I cite a lot of philosophers in this article, most of whom have very pertinent views on the basis of Equality, but probably the most eloquent and pertinent is Anthony Kiedis of the Red Hot Chili Peppers, who summed up the need from these arguments by saying that "The Power Of Equality/ Is not yet what it ought to be." Now, besides using three of the favorite words of all value debaters-"ought to be"--Anthony also points out how, regardless of how useful equality can be in a round, it can be a rare argument, or, more commonly, a misinterpreted one. Maybe this is because people throw the word around a lot without thinking about the different things it can mean. I hope to clarify what I feel are the three most common interpretations and, not coincidentally, the most powerful equality-oriented stances I've seen.

First, there is possibly the easiest equality related position to defend: Equality of rights. I need to clarify something first, though: Unless I specify otherwise, this article is going to deal with these positions relating to social obligation. Since we have no resolution to specifically address, we'll just deal with the most debatable aspect of all these arguments: Just how far should society go in promoting these different aspects of equality? That having been said, let's go back to equality of rights. When I say that, I mean rights normally termed political rights, like equal access to freedoms of speech and assembly, equal ability to participate in the system (through things like voting) and generally, equal liberties. Contrast this with the other forms of equality? Glad you asked! Probably the most debatable (and the biggest focus I will take later) is the concept of equality of opportunity. Equality of opportunity generally means ensuring that the government limits inequality along the way as people strive for their goals. Norman Daniels explains it like this:

> **Norman Daniels, Justice and Health Care, 1979, pg. 309:**
> "Liberal Political philosophy has relied on what is essentially procedural notion, equality of opportunity, to justify a system in which unequal outcomes are thought morally acceptable. It is all right that there are winners and losers, as long as the race is fair."

These two are both viable and defensible stances. You can make a good case for a social obligation to ensure either of them. But the third kind of equality...well, it would be pretty sticky to try to convince a judge or three that society has to ensure an equality of condition. P.J. O' Rourke says that we all fear populism because deep down we think that, if the populist is elected, he will send government agents to take our new lawnmower because the family down the street can't afford a mulching grass-hacker of their own. He might be right, but equality of condition is still a position most value debaters will have to deal with and can even be a useful tool, especially if you hit equality and doesn't specify what kind he/she is referring to. A good strategy to use in attacking someone's equality-based case is cross examination: If someone insists society ought only provide equality of rights or opportunity, try to get them to defend equality of condition instead. Two examples you could use in cross examination are these: First, establish that we're not just talking about racial or gender equality, but socio/economic equality, too! What about the poor families who can't afford to send their children to college? That gives those better off economically more opportunity, and the only way to provide true equality is for the government to start handing out stuff, i.e. money, Toro lawnmowers, Red Hot Chili Peppers C.D. 's... the point is, in order to fully ensure equality of opportunity, you have to cross the line and start giving out equality of condition to some extent, too. (according to this argument, that is...I'll get into how I would respond a little later) The second way you can pressure someone into defending equality of condition instead of something else is to talk about system abusers. For example, if you take it in the context of the nationals resolution regarding health care, how much the government to ensure opportunities to someone who abuses them by abuse their own health? Further if you want to try a flip, you can say that this violates equal treatment of

citizens. Theoretically (according to this line of reasoning) the government ought to treat everyone equally, right? Then why do certain citizens (in this case the wealthy) have more obligations than others, to keep paying for someone who is just leeching off of, rather than contributing to, society?

Now, if you run one of the other two forms of equality and want to weasel out of equality of condition, this is how I would respond to my reasoning. First we're not trying to ensure solvency by forcing every individual to have absolutely equal chance. We don't debate either absolutes or solvency in L.D. All we're saying is that society *ought to try* to promote equality of opportunity. *If* it can't ensure absolute equality of opportunity without getting the equality of condition, so what? In LD, we don't have to ensure that anything *will* happen. We just need to show that, in general, people *ought* to have an equal shot at things.

On the other argument, you can say that although it's nice for the rich to have property, when they enter into the social contract, they give up their absolute right to property in exchange for other things. I'll get into this more under the equality of opportunity section specifically, but the thesis of the two arguments go like this: 1) Everyone has an obligation to provide basic rights for citizens of society, and 2) equality of opportunity is a prime social good. Since a society can't be just without it, it must ensure it before anything else. More on that later, for now, let's examine the best way to separate the equality of opportunity from the equality of condition, which is using the philosophy of John Rawls. (At this point I would like to say that Rawls is to equality arguments what Micheal Jordan is to the Bulls, what Strong Drugs are to hunter Thompson, and what Dan Quale is to Jay Leno's career...the second can't survive and thrive without the first. I *STRONGLY* encourage you to check out VB's philosopher abstracts on him, or better yet read the book, which is surprisingly unboring) That having been said the point I was getting at is that the easiest way to distinguish equality of opportunity and condition is to use the fact that Justice regarding equality of opportunity is procedural... like Norman Daniels said, it's OK if people's condition turns out differently, as long as no arbitrary factor holds people back.

> **John Rawls, Philosopher, A Theory of Justice, 1971, pg.86**
> "Pure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed."

So since equality of opportunity is not dependent upon providing any equality of condition, you don't have to defend the government handing out things.

At this point, I'd like to kind of roadmap a little bit...We've identified the kinds of equality we're looking at, so now I'll sum up the differences between them and certain characteristics of each. Then I'll deal with equality of rights and equality of opportunity individually, explaining the strengths and weaknesses of each. Finally, we'll look at equality arguments as a value/criteria standpoint and how they can be best worked to your advantage.

Looking at these positions from the perspective of social obligation, we can say that their differences amount to this:

How far the government needs to go: To provide equality of political rights, it seems, all society needs to do is set up the necessary framework of a system which doesn't fairly exclude anybody from their rights. With equality of Condition (from now on equality of condition is e of c and equality of opportunity is e of o) , society's position gets a little grayer, and there's a lot more ground for debate. However, in general, I would assume that e of o requires on the part of the government than e of r. For example, when Rawls talks about fair e of o, he primarily deals with job replacement, and people not

being prevented from fairly pursuing work, and even expands his views to the social structure of the nation when determining if his conception of justice is being served.

John Rawls, Philosopher, A Theory of Justice, 1971, pg 87
"Suppose that law and government act effectively to keep markets competitive, resources fully employed, property and wealth...widely distributed by the appropriate form of taxation, or whatever, and to guarantee a reasonable social minimum. Assume also that there is fair e of o underwritten by education for all; and that all the other equal liberties are secured. Then it would appear that the resulting distribution of income and the pattern of expectations will tend to satisfy the difference principle."

What I am trying to say is that e of r requires less government intervention than e of o and e of o less than e of c. This is not to say that e of r is always a stronger stance, and we'll see reasons why a little bit later.

Now let's deal with equality of rights. Now, whether you run this as a value standpoint or a contention, there are a couple of things which you should try to prove: 1) That it is necessary for society to provide; 2) (And this is optional, but is really nice to have for impacts) That it is the most important value or quantity, depending on how you happen to run it. I'll keep this in mind when we deal with e of o, too. For now, though, it becomes necessary to ask ourselves this: Why would anyone but a Nazi or Pat Buchanon (or both) deny that society ought to deny e of r? If you're only dealing with the fights in the sense I have, like freedoms, then it won't take much to prove that society ought to provide for them. Now, instead, let's look at some interesting arguments why e of r is the most important, or at least, an important value.

An argument I liked to use was based on the fact that Social Contract philosophers agreed that the State of Nature or, as Rawls referred to it, the Original Position, was a state of equality of rights.

John Locke, Two Treatise of Civil Government, edited by Thomas Cook, 1947, pg 122.
"we must consider what state men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature...A state also of equality, wherein all the power of jurisdiction is reciprocal, no one having more than another."

Jean-Jacques Rousseau, Philosopher, The First and Second Discourses, Edited by Roger Masters, 1964, Pg. 140
"Inequality is barely perceptible in the state of nature, and it's influence there is almost null..."

John Rawls, Philosopher, A Theory of Justice, 1971, pg 19
"It seems reasonable to suppose that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reason for their acceptance, and so on. Obviously, the purpose for these conditions is to represent equality between human beings as moral persons, as creatures having conception of their good and capable of a sense of justice."

So we've established that the state of nature or Original Position or whatever contains equal individuals. How does this affect the way we work these positions? One way it can is through the argument I mentioned, which, stated in one sentence is this: e of r is necessary for a rational society to be created. The analysis works like this: That since theoretically individuals come together out of the state of nature

to establish a just society, the very basis of that society has to come from everybody being able to get equally involved and have their voice heard. Don't fall into the trap of saying the state of nature is a really, really cool thing, or else it can be an easy flip. If I hit this argument, I would say that the state of nature was a pretty big dupe for the weaker inhabitants. Read some evidence from a philosopher like Tom Hobbes who characterized the state of nature as providing lives as "poor, nasty, brutish, and short." Also, run analysis which says that in the state of nature people can go around arbitrarily robbing, pillaging, killing, and other things characterized in "Immigrant Song" by Led Zeppelin. There will be more in this article later on Arbitrary Retribution in the state of nature, but for now, this piece of evidence should illustrate the point...

Roger Masters, Dartmouth College, Jean-Jacques Rousseau: The First and Second Discourses, pg 17-18
"In the 'state of nature' (i.. prior to the political establishment of political society) each man was his own judge; there was no superior to enforce any 'laws' ."

The flip comes in when you say the state of nature is an awful thing with many problems, yet equality is still present. Therefore, e of r is comparatively unimportant compared to other values. This flip is cool if two things happen: 1) You prove that society is desirable over the state of nature, which is relatively easy and, like I said, you can use some of the Arbitrary Retribution stuff I bring up along with any arguments that you may somehow generate. 2) you force whoever is running this argument to advocate the state of nature, which should be a bitch to do! The flaw in this response is that it ignores the thesis of the contention, which is that e of r has to be there to provide the basis of a just society. If e of r is not present, then the basis of the society is unjust in the first place.

It seems that very few debaters would deny the necessity of equal freedoms, but, just in case, here is a good, seldom used, defense for it. Philosopher Baruch Spinoza believed that if freedom of thought was restricted by any condition whatsoever but specifically a prejudiced condition, then not only would that be immoral, but also the society risks its own self destruction.

Charles Frankel, The Pleasures of Philosophy, 1972, pg 115, Quoting Baruch Spinoza, Philosopher, A Theologo-Political Treatise, 1670
"...not only may such liberty be granted without prejudice to the public peace, to loyalty, and to the rights of rulers, but that it is even necessary to their preservation. For when people try to take it away, and bring to trial not only the acts which alone are capable of offending, but also the opinions of mankind, they only succeed in surrounding their victims with an appearance of martyrdom, and raise feelings of pity and revenge rather than terror."

What Barouch is saying here, in his own unique way, is that it is not only morally unjustified to deny any portion of society freedom of thought and expression, but also that if society does it, this happens: People feel sorry for the oppressed group and honked off at the government. This causes violent revolutions which are justified (Are you listening, Tipper Gore?). So the impacts are substantial: Not only is it morally correct to provide Equality of Rights, it's also in the government's interests of self-preservation. If I were the government, I'd think Equality of Rights was fairly groovy.

Considering that we're looking at these arguments pretty much in the light of social obligation, I ought to start the Equality of Opportunity section with the philosopher who makes it an integral part of his theories, and that's Rawls. Rawls believes that his conception of justice as fairness can only be satisfied if equal liberty and equality of opportunity are provided. Even more important to a value, he says these are the two most important values. This is a card to have around:

John Rawls, philosopher, A Theory of Justice, 1971, p. 93:
"How are the different primary social goods to be weighed? Assuming that the two principles of justice are serially ordered, this problem is greatly simplified. The fundamental liberties are always equal, and there is fair equality of opportunity; one does not need to balance these liberties and rights against other values."

So Rawls thinks that these values are prerequisite. He also says that the structure of society ought to be based around those principles.

John Rawls, Philosopher, A Theory of Justice, 1971, p. 97:
"Now as far as possible the basic structure should be appraised from the position of equal citizenship. This position is defined by the rights and liberties required by the principle of equal liberty and the principle of fair equality of opportunity. When the two principles are satisfied, all are equal citizens, and so everyone holds this position."

According to Rawls, the only way a society can be just is to provide for these qualities, which is very useful in a vale or criteria stand.

Now, naturally, nature sometimes hands us characteristics that render us unequal. We can't all be born rich, or with connections, or with a family business, or whatever. Rawls saw this, and went so far as to somewhat advocate the government evening things out a bit. This is an interesting card:

John Rawls, Philosopher, A Theory of Justice, 1971, p. 100:
"This is the principle that undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are somehow to be compensated for. Thus the principle holds that in order to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favorable social positions."

You can use this to strengthen Equality of Opportunity positions, and even advocate equality of condition to a limited extent if you can get strong enough links.

Ok, so we've seen that these inequalities exist and no matter how much society does, there's still going to be some. Kurt Cobain will always be able to buy more stuff than I can. So how can we morally justify this? Rawls answers that as long as inequalities can't be eliminated without hurting those who are disadvantaged even more.

John Rawls, Philosopher, A Theory of Justice, 1971, p. 83:
"Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."

So if the Reaganites are right and Kurt's money is currently "trickling down" to starving students like me, then all that money he made off of Nevermind is morally OK. As for the second part of that statement ... well, I guess if Kurt can get rich and famous then anybody has a fair shot.

As long as we're dealing with Equality regarding social obligation, it should be pointed out that a strong argument about obligations is reciprocity. The idea is that obligation is a two way street, kind of a "you-scratch-my-back-I-shave-yours" sorta thing. This can be a particularly strong argument if you get your

opponent to grant that people enter into the social contract and give up certain rights in order to achieve certain benefits. This can be a very strong flip if you hit someone running individual rights. Just say, sure, individual rights are important. Yet even though they are so important **PEOPLE STILL GIVE THEM UP IN ORDER TO GET THE BENEFITS OF SOCIETY**, for example, equality of opportunity, your value! Because people who enter into the social contract value your premise of equality higher than your opponent's individual rights position, you've just scored big. Here's a short, sweet card on reciprocity ....

> **John Rawls, Philosopher, A Theory of Justice, 1971, p. 102:**
> "A further point is that the difference principle expresses a condition of reciprocity. It is a condition of mutual benefit."

A fun way you can extend on this is to establish through logic that all individuals in society are covered by the social contract. That's pretty much common sense. That's also a good stance to take against someone who insists on running that society has no obligation to those who abuse the system. More often than not, they will be running some kind of individual rights case. Just say that since everybody, even this system abuser, is covered under the social contract, the government owes them the justice they bought by giving up certain precious individual rights.

Despite the fact that Rawls is the most comprehensive Equality oriented philosopher, one of my favorite things to argue is based on John Locke. Locke, unlike a lot of philosophers, didn't believe the state of nature was an inherently evil condition: He thought that no individual had the right to harm another. So why did Locke believe the social contract was necessary? Well, having no right to harm someone doesn't mean it isn't going to happen. One of the reasons the state of nature was so nasty is that everyone had the same power to make judgments about things which could affect others. For example, in Terminator 2, when Robert Patrick, the evil T-100 disguised as a police officer, stares down another cop's transport and says ... "Say, that's a nice bike." Just because he is bigger, stronger, made of liquid metal, etc., in the state of nature he would have the power to just strip this poor guy of his transport. OK, that happens anyway in the movie, but society should theoretically restrict him (throw him in jail) and return the property, thus allowing the weaker individual the same right to keep his property as the strong one. The theory behind the argument is that society's entire purpose is to provide equality by preventing the stronger from oppressing the weaker and eliminating arbitrary factors which destroy justice. Locke helps back it up with statements like this one regarding arbitrary power:

> **John Locke, Philosopher, Two Treatises of Government, ed. by Thomas Cook, 1947, p. 132:**
> "This freedom from arbitrary power is so necessary to and closely joined with a man's preservation that he cannot part with it but by what forfeits his preservation and life together."

But wait! Locke said that every individual has equal rights in the state of nature! So why, all of the sudden, is this place so bad? Well, Locke answer:

John Locke, Philosopher, Two Treatises of Government, ed. by Thomas Cook, 1947, p. 132:
"To which it is obvious to answer that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure."

The most important part of this card is the "and the greater part no strict observers of equity and justice" line. The point is that the state of nature gives arbitrary power to people who really couldn't care less about equality, thus equality must erode in the state of nature. But fear not! We have society! We have laws, and elected officials, and public restrooms. Society gives us all these benefits ... but the reason we got into this society in the first place, this argument says, was to ensure equality by restricting people's arbitrary rights to take what they wanted.

John Locke, Philosopher, Two Treatises of Government, ed. by Thomas Cook, 1947, p. 132:
"By which means every single person became subject, equally with other the meanest men, to those laws which he himself as part of the legislative, had established; nor could anyone, by his own authority, avoid the force of the law when once made, nor by any pretense of superiority, plead exemption."

So instead of the state of nature allowing the powerful to take what they wanted, paying no attention to equality, society gives us a presumably fair place to be in. Now, society has an obligation to keep doing it. This argument really helps if the resolution starts you on the social obligation track.

Naturally, not every philosopher says that equality of opportunity is the best thing around. We can examine the thoughts of George Wilhelm Frederich Hegel. Just call him Hegel. He argued that if we gave everyone equality of opportunity then societal progress would be stalled because we would have to restrict the opportunities of the most advantaged. Hegel thought that if that happened, progress would slow or halt. You can use this to respond to a Rawls position that says restrictions on Equality ought to be only if they work to everyone's advantage.

GWF Hegel, Philosopher, Philosophy of Right, translated by T.M. Knox, 1952, p. 130
"Men are made unequal by nature, where inequality is in its element, and in civil society the right of particularity is so far from annulling this inequality that it produces it out of mind and raises it to an inequality of skill and resources, and even to one of moral and intellectual attainment. To oppose this right a demand for equality is a folly of the understanding, which takes as real and rational its abstract equality and its 'ought to be'."

What Hegel is saying is that we're pretty much unequal anyway, and to try to equalize us is denying the maximization of our opportunities as a society. Unfortunately, he says this very long-windedly, so you might just want to quote Rawls ...

John Rawls, Philosopher, A Theory of Justice, 1971, p. 300:
" ... it is not enough to argue, as Burke and Hegel appear to, that the whole of society including the least favored benefit from certain restrictions on equality of opportunity. We must also claim that the attempt to eliminate these inequalities would so interfere with the social system and the operations of the economy that in the long run anyway the opportunities of the disadvantaged would be even more limited."

So, even though Hegel's stance seems to satisfy Rawls, it apparently doesn't satisfy Rawls himself. Whether it satisfies his premise, though, is probably better settled in rounds.

Another argument to use against society ensuring equality of opportunity is that it can't. Jean Jacques Rousseau, in an extremely pessimistic discourse entitled "Discourse on the Origin and Foundations of Inequality Among Men," basically says that there are a few natural inequalities, but society constitutes far more than that.

Jean Jacques Rousseau, Philosopher, The First and Second Discourse, ed. by Roger Masters, 1964, p. 101.
"I conceive of two sorts of inequality in the human species; one, which I call natural or physical ... the other, which may be called moral or political inequality, because it depends upon a sort of convention and is established, or at least authorized, by the consent of men. The latter consists in the different privileges that some men enjoy to the prejudice of others, such as to be richer, more honored, more powerful than they, or even to make themselves obeyed by them."

Rousseau rips on society's inequality a lot, but the best two cards needed to run this argument are these. The first one shows how society is responsible for the onset of political inequality, and the second proves that society continues to foster that moral and political inequality Rousseau speaks of.

Jean Jacques Rousseau, Philosopher, The First and Second Discourse, ed. by Roger Masters, 1964, p. 138.
" .... it will be understood how much less the difference between one man and another in the state of nature than in society, and how much inequality must increase in the human species due to instituted inequality."

Jean Jacques Rousseau, Philosopher, The First and Second Discourse, ed. by Roger Masters, 1964, p. 138.
"If this were the place to go into details, I would easily explain how, even without the involvement of government, inequality of credit and authority becomes inevitable between individuals as soon as, united in the same society, they are forced to make comparisons between themselves and to take into account differences they find in the continual use they have to make of one another."

At this point, the argument is just that there is no way society can provide equality because it is inherently unequal. But this is value debate! We shouldn't prove what IS, only what OUGHT to be. Therefore, whether society can or cannot provide equality makes no difference, right?

Maybe. But the Rousseau argument is a lot stronger if you bring in the philosophy of Spinoza. One of Spinoza'a premises is that society ought not try to do what it does not have the power to do.

Charles Frankel, Professor of Philosophy, The Pleasures of Philosophy, 1972, p. 103.
"A moral maxim with a wholly practical base thus follows from Spinoza's realism; it is evil to try to do what one does not have the power to do."

The way Spinoza arrived at this conclusion is looking at repression of freedom of thought.. Spinoza ascertained that (1) Government cannot change the way people think, and (2) When it tries, it "simply weakens itself and causes suffering to no purpose." (Frankel's words) Anyway, there are still some problems with Spinoza's reasoning. What about individuals? Should they also not try to do something they don't think they can? Also, what if a government is not aware of it's capabilities? If it doesn't know what it can or can't do, it really isn't evil, is it? These are only a few ways you could attack this, but initially, the premise isn't that bad: Philosophically, you prove how societal intervention inevitably causes inequality, and then you prove it is evil to try to do something you can't do. Therefore, if society can't provide equality (like Rousseau says it can't) than it is immoral and harmful for it to try.

So there you have it: A few Equality based arguments. There's a lot I haven't covered, but I hope what I did helps out a lot. Have fun in your rounds, and FORGET what Spinoza said ... try to do things you don't think you have the power to do. You'll surprise yourself. Be groovy, and good luck in 92-93!

Objectivism and Ayn Rand
by Chase Wrenn

The first thing anyone should know about Ayn Rand is how to pronounce her name. Her first name is NOT Ann, and do not pronounce it as though it were. Nor is it Ane (with a long A), so never pronounce it that way either. It is Ayn; is should be pronounced as though spelled Ein, like the first syllable of Albert Einstein's last name. She was a philosopher and novelist who immigrated to the U.S. from Leningrad. Her philosophical ideas are collectively called Objectivism (pronounced as spelled), and reflect her hatred of totalitarianism in all forms, from fascism to communism. Rand's novels, which include The Fountainhead, Atlas Shrugged, Anthem, among others, are tools for the expression of her philosophical ideas. They have little literary merit. If you are looking for good literature with a strong philosophical basis, I would recommend a good existentialist novel like The Stranger or The Plague by Albert Camus. Rand also wrote several purely philosophic works.

Objectivism is something of an anti-philosophy. It has very much in common with Ross Perot's presidential campaign; it spends a great deal of effort in noting the flaws in other ways of thinking with comparatively little regard for its own systems. It does, however, romantically glorify man and his individuality.

> **Ayn Rand, "About the Author," Appendix to Atlas Shrugged.**
> "My philosophy, in essence, is the concept of man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and reason as his only absolute."

Rand broke her Objectivist philosophy down into four basic principles. We will examine each of them individually, but an overview is appropriate.

> **Ayn Rand, "Introducing Objectivism," The Objectivist Newsletter, Aug. 1962, p. 35.**
> "At a sales conference at Random House, preceding the publication of Atlas Shrugged, one of the book salesmen asked me whether I could present the essence of my philosophy while standing on one foot. I did, as follows:
>
> 1.Metaphysics: Objective Reality 2.Epistemology: Reason
> 3.Ethics: Self-interest
> 4.Politics: Capitalism
>
> If you want this translated into simple language, it would read: 1. 'Nature, to be commanded, must be obeyed' or 'Wishing won't make it so'. 2. 'You can't eat your cake and have it too.' 3. 'Man is an end in himself.' 4. 'Give me liberty or give me death.'"

With this overview in mind, we might as well just jump right into the metaphysical basis of Objectivism, objective reality.

NOTE: Do NOT skip over this part of the article. Whoever told you that metaphysics has no place in LD is either a liar or simply unenlightened regarding one of the most important parts of the study of *any* philosophy. It would be impossible to properly debate Rousseau's political theory without a fundamental understanding of the metaphysical principles behind the General Will and the nature of man. Similarly, to argue Kant without familiarity with his metaphysics of *a priori* necessities is suicide against someone who does understand Kant's metaphysics. So far as Objectivism is concerned, its metaphysical basis is of utmost importance. It provides the answer to "Why?" regarding almost every other aspect of Objectivism.

Ayn Rand, "Introducing Objectivism," The Objectivist Newsletter, Aug. 1962, p. 35.
"1. Reality exists as an objective absolute -- facts are facts, independent of man's feelings, wishes, hopes, or fears."

In case you haven't already noticed, this is probably the ***single most important aspect of Objectivism.*** Essentially, the Objectivist claim is this: reality is real. Man can't wish the sky into greenness nor can he hope his way into a more advantageous tax bracket. Two important conclusions follow. First, the world I see is exactly the same as that perceived by every other sane person. It is real and objective independent of my observation. This principle is the "Primacy of Existence".

Leonard Peikoff, The Ominous Parallels, p. 329.
"Existence is the first axiom. The universe exists independent of consciousness. Man is able to adapt his background to his own requirements, but 'Nature, to be commanded, must be obeyed' (Francis Bacon). There is no mental process that can change the laws of nature or erase facts. The function of consciousness is not to create reality, but to apprehend it. 'Existence is Identity, Consciousness is Identification.'"

This part of the Objectivist system is intuitively sensible. After all, grass is green, and my looking at it doesn't change its greenness nor will I be able to create blue grass through force of will. Therefore, it should not be difficult to persuade someone that this fundamental premise is true.

Who said life was going to be easy? That principle may sound good, but the fact is that it is just as incorrect as 2+2=-5. According to relativistic physics, reality is not objective and absolute. Rather, the very act of observing a phenomenon changes it drastically. For a complete explanation of the principles involved, check a good text on relativistic and quantum physics. Suffice it to say that the metaphysical premise of Objectivism is flawed, but so are Kant's metaphysical ideas (for many of the same reasons), and that doesn't seem to stop people from running Kant.

Rand's second premise of Objectivism is epistemological (which means it deals with the nature of man's mind).

Ayn Rand, "Introducing Objectivism," The Objectivist Newsletter, Aug. 1962, p. 35.
"2. Reason (the faculty which identifies and integrates the material provided by man's senses) is man' only means of perceiving reality, his only source of knowledge, his only guide to action, and his basic means of survival."

This is the backing for Rand's romantic view of the nature of man. Objectivism paints a picture of man as a reasonable creature surviving and prospering by his wits. It views man's emotions as tools to be subjugated to the force of reason and will.

Ayn Rand, "Playboy's Interview with Ayn Rand," pamphlet, p. 6.
"There is no necessary clash, no dichotomy between man's reason and his emotions -- provided he observes their proper relationship. A rational man knows -- or makes it a point to discover -- the source of his emotions, the basic premises from which they come; if his premises are wrong, he corrects them. He never acts on emotions for which he cannot account, the meaning of which he does not understand. In appraising a situation, he knows why he reacts as he does and whether he is right. He has no inner conflicts, his mind and emotions are integrated, his consciousness is in perfect harmony. His emotions are not his enemies, they are his means of enjoying life. But they are not his guide; the guide is his mind. This relationship cannot be reversed, however. If a man takes his emotions as the cause and his mind as their passive effect, if he is guided by his emotions and uses his mind to rationalize or justify them somehow -- then he is acting immorally, he is condemning himself to misery, failure, defeat, and he will achieve nothing but destruction -- his own and that of others."

This rationalistic view of man is based, naturally, on the materialistic conclusions of Objectivist metaphysics. If reality is an objective absolute, then all things must necessarily have a rational cause or explanation in order to exist. Man's emotions, therefore, are simply the effects of what he does and thinks and can be rationally understood and controlled. Man is at his peak when he guides himself by reason and uses his emotions as secondary benefits to his actions.

This view is in direct conflict with that of Jean-Jacques Rousseau, who claimed that man's guide should be his emotions, particularly that of compassion. Without the corrupting influence of society, according to Rousseau, man would always behave according to his passions and live in a blissful state of nature.

Thus far we have a system of thought in Objectivism which embraces an objective, absolute picture of the universe populated by rational mankind. The rational behavior of man in this universe leads to Rand's ethical premise.

Ayn Rand, "Introducing Objectivism," The Objectivist Newsletter, Aug. 1962, p. 35.
"3. Man -- every man -- is an end in himself, not the means to the ends of others. He must exist for his own sake, neither sacrificing himself to others nor sacrificing others to himself. The pursuit of his own happiness is the highest moral purpose of his life."

If you can see a superficial similarity between this ethical view and that of Immanuel Kant, give yourself a gold star. If you think you could run Kant and Rand together, take the star away and subtract five points. Due to certain metaphysical similarities between Kant and Rand, the initial premise of Objectivist ethics is identical to that of Kantian ethics. Man is an end in himself, never a means. But Kant's ethics are based on the metaphysical idea that time, space, and (in a sense) morality are objective, *a priori* necessities for existence itself. Rand held that all is objective, and therefore allows for a much more absolute stance on man's status as an end.

According to Kant, man has a moral obligation to treat others as ends in and of themselves and never as means to his obligations and duties to others. Rand rejects this. Objectivism teaches that the very idea of duty is a manipulative lie. Man must never use others as means to his own ends, but neither may he use himself as means to the ends of others. All his actions should be based on his own motivations and taken for his own reasons, provided he avoids harming others. Thus, Rand's ethics are much more in line with Mill's harm principle or the old druidic saying adopted by Aleister Crowley and the Wiccans, "As it harms no one, to do as thou wilt is the whole of the law."

An example: A rich man is walking down the streets of Nashville (Music City USA), when a beggar asks him for a dollar. Kant might say that the rich man ought to give the beggar a buck to help him out and be a nice guy. Rand, on the other hand, would say that although it may be pretty nice to give the beggar a greenback, the rich man should never do it unless he would derive some benefit from the act. For the rich man to simply give him a dollar would be to use himself as a means to the ends of someone else, the height of immorality. Thus, Objectivism despises altruism.

Ayn Rand, "Introduction," The Virtue of Selfishness, p. x.
"Altruism declares that any action taken for the benefit of others is good, and any action taken for one's own benefit is evil. Thus the beneficiary of any action is the only criterion of moral value -- and so long as that beneficiary is anybody other than oneself, anything goes."

Ayn Rand, "The Objectivist Ethics," The Virtue of Selfishness, p. 33.
"Altruism holds death as its ultimate goal and standard of value."

Rather than be sacrificing and altruistic, Objectivism says that the moral man rationally pursues his own goals for his own reasons.

Ayn Rand, "Causality Versus Duty," Philosophy: Who Needs It?, p. 118.
"Life or death is man's only fundamental alternative. To live is his basic act of choice. If he chooses to live, a rational ethic would tell him what principles of action are required to implement his choice. If he does not choose to live, nature will take its course."

Thus, the Objectivist standard of morality is the individual's fulfillment of his own life, guided by reason.

Ayn Rand, "The Objectivist Ethics," The Virtue of Selfishness, p. 16.
"The standard of value of the Objectivist ethics -- the standard by which one judges what is good or evil -- is *man's life*, or: that which is required for man's survival *qua* man. Since reason is man's basic means of survival, that which is proper to the life of a rational being is the good; that which negates, opposes, or destroys it is the evil. Since everything man needs has to be discovered by his own mind and produced by his own effort, the two essentials of the method of survival proper to a rational being are: thinking and productive work."

We can see that rationality and survival are standards of Objectivist ethics, but the system itself is somewhat weak. First, if morality is a derivative of rationality, then it must also be bound by rationality's limits. Thus, the irrational man or man with less reason than most others, such as a severely retarded individual, would find moral splendor unattainable. Furthermore, I have been unable to find any Objectivist standards for what is or is not rational. Rationalist, in the Objectivist viewpoint, is the processing of the data we observe into information we can use; but what does that tell us? If different people reach different rational conclusions, then morality itself becomes subjective and cannot exist in Objectivist metaphysics.

It has been said (by me, but I don't know if I was plagiarizing or not) that morality rules individuals, but justice rules the state. Justice is morality writ large, and having examined the ethical view of Objectivism it is time to look at its political views.

Ayn Rand, "Introducing Objectivism," The Objectivist Newsletter, Aug. 1962, p. 35.
"4. The ideal political-economic system is *laissez-faire* capitalism. It is a system where men deal with one another, not as victims and executioners, nor as masters and slaves, but as *traders*, by free, voluntary exchange to mutual benefit. It is a system where no man may obtain any values from others by resorting to physical force, and *no man may initiate the use of physical force against others.* The government acts only as a policeman that protects man's rights; it uses physical force *only* in retaliation and *only* against those who initiate its use, such as criminals or foreign invaders. In a system of full capitalism, there should be (but, historically, has not yet been) a complete separation of state and economics, in the same way and for the same reasons as the separation of state and church."

Objectivism, therefore, despises social programs and the welfare state. According to Objectivism, whenever the state provides for some of its citizens, it must necessarily steal from the rest in for the form of taxation or the seizure of labor itself, rather than its fruits. Naturally, this directly contradicts the Rawlsian view of justice.

Ayn Rand, "An Untitled Letter," Philosophy: Who Needs It?, p. 132.
"The new 'theory of justice' [of John Rawls] demands that men counteract 'injustice' of nature by instituting the most obscenely unthinkable injustice among men: deprive 'those favored by nature' (i.e., the talented, the intelligent, the creative) of the right to the rewards they produce (i.e., the right to life) -- and grant to the incompetent, the stupid, the slothful a right to the effortless enjoyment of the rewards they could produce, could not imagine, and would not know what to do with."

According to Objectivism, man progresses through the innovations of the talented, intelligent, and creative acting out of the motivation of benefit themselves. To try to force them to work for others' benefit would be to stagnate man's progress.

Ayn Rand, "What Is Capitalism?", Capitalism: The Unknown Ideal, p. 29.
"America's abundance was not created by public sacrifices to the 'common good,' but by the productive genius of free men who pursued their own personal interests and the making of their own private fortunes. They did not starve the people to pay for America's industrialization. They gave people better jobs, higher wages, and cheaper goods with every new machine they invented, with every scientific discovery or technological advance -- and thus the whole country was moving forward and profiting, not suffering, every step of the way."

Objectivism denies the legitimacy of collectivism, which teaches the subordination of individual desires and goals to those of the group. Included under the umbrella term of collectivism are any social programs which use public resources to help a certain segment of the population; for example, taxing the rich and giving that money to the poor.

Ayn Rand, "Theory and Practice", Capitalism: The Unknown Ideal, p. 137.
"Collectivism does not preach sacrifice as a temporary means to some desirable end. Sacrifice is its end -- sacrifice as a way of life. It is man's independence, success, prosperity, and happiness that collectivists wish to destroy."

> **Ayn Rand, "An Untitled Letter," Philosophy: Who Needs It?, p. 123.**
> "The advocates of collectivism are motivated not by a desire for men's happiness, but by hatred for man... hatred of the good for being the good; the focus of that hatred, the target of its passionate fury, is the man of ability."

The only acceptable economic system to Objectivism is full capitalism.

> **Ayn Rand, "The Objectivist Ethics," The Virtue of Selfishness, p. 32.**
> "When I say 'capitalism', I mean a full, pure, uncontrolled, unregulated laissez-faire capitalism -- with a separation of state and economics, in the same way and for the same reasons as separation of state and chuch."

Economic life to the Objectivist is a very personal issue with which the state should not interfere. Capitalism is not justified in terms of the "common good", the existence of which Objectivism denies, but in terms of man's individual rights and rationality.

> **Ayn Rand, "What Is Capitalism?", Capitalism: The Unknown Ideal, p. 20.**
> "The *moral* justification of capitalism does not lie in the altruist claim that it represents the best way to achieve 'the common good.' It is true that capitalism does -- if that catch-phrase has any meaning -- but this is merely a secondary consequence. The moral justification of capitalism lies in the fact that it is the only system consonant with man's survival *qua* man, and that its ruling principle is: *justice.*"

Capitalism carries the advantage that it demands the most from man, forcing him to perfect himself, while also giving him proportionate reward.

> **Ayn Rand, "For the New Intellectual," For the New Intellectual, p. 24.**
> "Capitalism demands the best of every man -- his rationality -- and rewards him accordingly. It leaves every man free to choose the work he likes, to specialize in it, to trade his product for the products of others, and to go as far on the road of achievement as his ability and ambition will carry him. His success depends on the *objective* value of his work and on the rationality of those who recognize that value. When men are free to trade, with reason and reality as their only arbiter, when no man may use physical force to extort the consent of another, it is the best product and the best judgment that win in every field of human endeavor, and raise the standard of living -- and of thought -- ever higher for all those who take part in mankind's productive activity."

Capitalism thus draws its value not from any sort of idea that it is the best thing for everybody, but rather from the fact that it gives everyone the chance to make the most of themselves.

By now, you should have a fundamental, albeit patchy, understanding of Ayn Rand's Objectivist philosophy. A few concluding comments are therefore appropriate. First, you are not an authority on Objectivism just because you've read this article. If you think Objectivism is a philosophy you might life to run, then I would encourage you to read at least one or two of the following books:

Capitalism: The Unkown Ideal
Introduction to Objective Epistemology
For the New Intellectual
The New Left: The Anti-Industrial Revolution
The Ominous Parallels (by Leonard Peikoff)

Philosophy: Who Needs It?
The Romantic Manifesto
The Virtue of Selfishness
We the Living
Atlas Shrugged

Each of these books, as well as Rand's novels, gives a much better idea of what Objectivism is than this article. They also have the additional advantage that they were written by actual Objectivists, rather than someone who had simply done a little reading about Objectivism.

The second comment is actually something of a warning. More people have an opinion about Ayn Rand than have actually read her. Many judges will have the immediate reaction of "Rand!?! Why's he (or she, let's not be sexist) running that psycho?" To run Objectivism is often to invite ridicule and misunderstanding. I would advise having at least one alternate case to use if you really want to run Rand. Save Objectivism for judges who meet at least one of these criteria:

1. Very open-minded2. A friend of yours3. Objectivist

Most other judges will not like the idea of a debater using Ayn Rand.

And finally, a bibliographical note so that the G-men and copyright fascists don't give me or Victory Briefs any grief: All quotations in this article, though internally cited to various sources, are taken from The Ayn Rand Lexicon, ed. Harry Binswanger, New American Library, New York, 1986.

Have fun!

Enforcement of Morals
by Eric Johnson

The debate over the enforcement of morals includes the controversies over whether the government ought to restrict pornography, prostitution, drugs, gambling and other activities that have been traditionally regarded as immoral.

Activities that are outlawed on the grounds of morality, and not for the protection of members of society from other members are called "victimless crimes". For instance it is said that prostitution is a victimless crime because all involved parties consent to the activity, and therefore none can be considered victims. Obviously, whether or not these crimes truly have victims will be one of the aspects of the debate, but we will save that for later.

"The enforcement of morals" refers to the act of a government (or possibly some other agent of authority, perhaps a school) coercing persons to obey a code of morality. Remember, morality as it is used here is not the same as a value judgment. All laws are based on value judgments, in which the competing values of two alternatives are considered. But to be included under the term "enforcement of morals," the crime must be outlawed solely, or primarily because of its moral aspect. Murder, for instance is generally agreed to be immoral, but it is primarily the harm to the victim that forms the rationale for the criminal statutes.

Another issue which is very familiar to Lincoln/Douglas debate, and has much to do with the enforcement of morals is privacy. It is the value of privacy that is often used to defend the rights of the persons engaging in the alleged immoral activity. For instance in both abortion and illegal sexual practices, it is primarily the right of privacy that is used as a defense. In a sense, all discussions of the enforcement of morality are also talking about what people would call the right to privacy. Hopefully the enforcement of morals perspective will allow a deeper understanding of the issues and interests that are really involved.

This essay is not going to cover the individual topics that come under the concept of the enforcement of morals, rather it will deal with the general theory regarding what the government has to enforce its conception of morality, and what right persons in the society have to be protected from this kind of interference.

Many Lincoln/Douglas topics deal with the enforcement of morality in some way, and this overview of philosophical justifications will be readily applicable to any assertion that the government has the right to do something based on morality, or the assertion that an individual has the right to retain his liberty and be outside of the government's realm of influence in these matters.

And now, on to the evidence...

The history of the debate about the enforcement of morals is the story of a wacky group of English people many of whom were, we suspect, just trying to find an excuse to talk about sex in their treatises.

We begin with the familiar character of that 19th-century philosopher who learned Greek as a child, had a nervous breakdown as a teenager, and then grew up to have an "open" relationship with his wife...

John Stuart Mill: Free to Be You and Me

This is the guy who had the guts to say that life was all about maximizing pleasure (*Utilitarianism)* and also wrote the book that advocated experimenting with lifestyles and cleared the philosophical way for the decriminalization of marijuana, legal brothels and free love. The book is *On Liberty*, and the author was truly a hippie before his time.

In the debate about the enforcement of morals, *On Liberty* has come to be regarded as the classic defense of the viewpoint that the government ought not to interfere with individual liberty by enforcing morals. (By the way, Mill doesn't discuss individual topics, but his general principles were obviously intended to have wide application. So no, he doesn't *exactly* talk about legalizing pot in the book.)

Mill sets up a standard for the domain in which the government can legitimately use legal coercion. The government is entitled to use laws to protect the members of society, but the government may not use laws to infringe upon liberty when the actions in question are of no harm to others. Mill also notes that he does not allow for laws whose aim is the protection of people against themselves.

Power can only be used to prevent harm to others, not even to prevent harm to self
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 68.
"... the only purpose for which power can be rightfully exercised over any member of civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise."

The use of laws to protect people from harming themselves is called "paternalism." Laws that prohibit suicide fall under this category, (as well as the category "oh yeah, I bet this is really effective"). The availability of certain drugs only through a doctor's prescription is a common example, and it serves to show that Mill's statement is actually quite radical, especially when considered in the context of today's society. Can you imagine running down to the Rexall to prescribe yourself some morphine?

Mill uses his general principle to argue that the people must be allowed the liberty of choosing their own lifestyle and the own pursuits.

People ought to have liberty of tastes and pursuits
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 71.
"The liberty of expressing an publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people, but, being almost of as much importance as the liberty of thought itself and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits, of framing the plan of our life to suit our own character, of doing as we like, subject to such consequences as may follow, without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong."

After this, Mill takes the short step of extending this from one person, to combinations of individuals. People must be allowed to unites in their pursuits. Activities such as prostitution, homosexuality,

heterosexual sodomy, pre-marital sex and other traditionally immoral sexual acts fall under the protection of this derivation of the principle.

People ought to have the liberty to unite in their pursuits
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 71.
"Thirdly, from this liberty of each individual follows the liberty, within the same limits, of combination among individuals; freedom to unite for any purpose not involving harm to others; the persons combining being supposed to be of full age and not forced or deceived."

Notice once again that Mill uses the caveat that the actions must not cause harm to others that are not consenting in the activity. Mill's exception is very, very reasonable. But this is a point of Mill's theory that can potentially be exploited. If it can be shown that these activities really do cause harm to other people, then the government is justified in interfering with them, and this is exactly what authors will try to do a little later on in our essay.

Mill has a lot of faith not only in people's basic good nature, but also their ability to choose well for themselves. In *On Liberty* Mill talks often about how the mode of life that people choose for themselves is the best.

True freedom allows us to pursue good in our own way
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 72.
"The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily *or* mental and spiritual. Mankind are greater gainers by suffering each other live as seems good to themselves than be compelling each to live as seems good to the rest."

A person's own chosen mode of living is best
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 132-133.
"There if no reason that all human existence should be constructed on some one or some small number of patterns. If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode."

The above piece of evidence is very hopeful, requiring only that a person possess "any tolerable amount of common sense and experience."

Perhaps Mill didn't make any bad choices in his life, but he sure is optimistic about everyone else's ability to make it through. What comes to my mind is the example of a person who retains a tolerable amount of common sense but becomes addicted to drugs. Mill might say that it is best because "it is his own mode." But I think few people would agree with him there.

In the next quotation Mill take a slightly different tone and says that people ought to have liberty,. and that liberty is at their own risk and peril.

People ought to be free to make choices at their own risk
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 119.
"...men should be free to act upon their opinions -- to carry these out in their lives without hindrance, either physical of moral, from their fellow men, so long as it is at their own risk and peril."

While opponents of Mill try to find ways in which these "victimless crimes" really have victims, Mill reminds us that those persons who are deprived of liberty are victims. Most obviously harm results directly from the loss of liberty, since it can be said that an individual desires his liberty. But more than that, Mill also discusses other effects of the deprivation of liberty -- the blunting of the nature of the individual and the denial of the use of the powers of choice.

Choice is needed for the exercise of mental and moral capacities
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 122.
"The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference are exercised only in making a choice. He who does anything because it is the custom makes no choice. He gains no practice either in discerning or in design what is best. The mental and moral, like the muscular, powers are improved only be being used."

The enforcement of morals blunts and dulls the individual's nature
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 128.
"To be held to rigid rules of justice for the sake of others, develops the feeling and capacities which have the good to others for their object. But to be restrained in things not affecting their good, by their mere displeasure, develops nothing valuable except such force of character as may unfold itself in resisting the restraint. If acquiesced in, it dulls and blunts the whole nature."

Along with the harms of the deprivation of liberty, there are the advantages of granting it. The diversity of practices and ways of doing things is advantageous to society, Mill tells us. First he tells us that limits on government interference are needed.

Limits on interference are needed for a good condition of human affairs
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 63.
"There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism."

Borrowing from his discussion of freedom of expression, and the idea that the intercourse of ideas allow for new truths to be discovered, Mill extends analysis to include liberty of action to allow for new practices.

The defense of the enforcement of morality depends on the assumption that the morality is correct. Mill's quotes call that assumption into question. The collective morality is never good enough to justify deprivation of liberty, Mill says, as long as there is room for improvement -- in other words, unless the world is perfect.

Liberty is needed to allow for discovery of new practices and ways of doing things
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 129.
"There is always need of persons not only to discover new truths and point out when what were once truths are true no longer, but also to commence new practices and set the example of more enlightened conduct and better taste and sense in human life. This cannot well be gainsaid by anybody who does not believe that the world has already attained perfection in all its ways and practices."

Liberty is needed to keep society from stagnating socially
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 129.
"... there are but few persons, in comparison with the whole of mankind, whose experiments, if adopted by others, would be likely to be any improvement on established practice. But these few are the salt of the earth; without them, human life would become a stagnant pool. Not only is it they who introduce good things which did not before exist; it is they who keep the life in those which already exist. If there were nothing new to be done, would human intellect cease to be necessary? Would it be a reason why those who do the old things should forget why they are done, and do them like cattle, not like human beings?"

Liberty is the unfailing means of societal improvement
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 136.
"The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people; and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporarily with the opponents of improvement; but the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centres of improvement as there are individuals."

Sounding like a Woodstock veteran, Mill loves talking about alternative lifestyles. He doesn't go into specifics (read his autobiography for that), rather he speaks of the need for experiments in modes of living, and how these can be beneficial. The Age of Aquarius came just a little too late for John...

There should be different experiments in living
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 120.
"As it is useful that while mankind are imperfect there should be different opinions, so it is that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when anyone thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself."

Without diversity in modes of life, people cannot reach their full potential
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 133.
"Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies that, unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable."

Mill's defense of diversity in human activity is directly counter to philosophies that would allow a society's view of morality to become the law of the land. But what about these moralities that could be made into law? Where do they come from? Even in a democracy, Mill says, when they come from the people themselves, they are unacceptable. Mill elucidates the problems with the morality of the majority.

The majority will fail to recognize the importance of diversity
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 120.
"The majority, being satisfied with the ways of mankind as they now are (for it is they who make them what they are), cannot comprehend why those ways should not be good enough for everybody."

Rule of the masses in the social/moral sphere will lead to mediocrity
John Stuart Mill, philosopher, *On Liberty*, 1859, p. 131.
"The only power deserving the name is that of masses, and of governments while they make themselves the organ of the tendencies and instincts of masses. This is as true in the moral and social relations of private life as in public transactions. Those whose opinions go by the name of public opinion are not always the same sort of public: in America, they are the whole white population; in England, chiefly the middle class. But they are always a mass, that is to say, collective mediocrity."

The Wolfenden Report: It's None of Our Business
In 1957, in Britain, the Committee on Homosexual Offenses and Prostitution, also known as the Wolfenden Committee, issued a report that recommended the decriminalization of homosexuality. In doing so they reopened discussion on the role of the law in moral enforcement. The committee's report seems to reflect an outlook that is similar to Mill's. The quotations below are kind of long, but the context is worth seeing. I'll let you cut your own card out of this:

The function of the criminal law is protection, not moral enforcement
***The Wolfenden Report: Report of the Committee on Homosexual Offenses and Prostitution*, Steign and Day, 1963, para. 13&14.**
"We have therefore worked with our own formulation of the function of the criminal law so far as it concerns the subjects of this inquiry. In this field, its function, as we see it, is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.
It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behavior, further than is necessary to carry out the purposes we have outlined."

Private morality is not the law's business
***The Wolfenden Report: Report of the Committee on Homosexual Offenses and Prostitution*, Steign and Day, 1963, para. 61.**
"Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality. On the contrary, to emphasize the personal the personal and private responsibility of the individual for his own actions, and that is a responsibility which a mature agent can properly be expected to carry for himself without the threat of punishment from the law."

Lord Patrick Devlin and H.L.S. Hard: Duking it Out

One of the persons called upon to testify before the Wolfended Committee was a judge, Lord Patrick Devlin. As a consequence of his involvement, Devlin eventually put together a book called The Enforcement of Morals. The book is now regarded as the classic reply to Mill's stance.

In turn, H.L.A. Hard wrote *Law, Liberty, and Morality* in which he attempted to defend Mill, and vanquish Devlin. The exchange covers the most essential points of the enforcement of morals controversy.

Devlin reasons that a society is justified in legislating morality because it is morality that holds the society together. Without this common element, the society will fall apart. Thus the enforcement of morals is a society's way of protecting itself from internal threats created by the decay of the public morality.

This is how Mill's own reasoning can be turned against him. If the unity of society is harmed by the immorality, then even under Mill's standard, the government is justified in taking action. Society's being harmed by immorality, however, is a very big assumption

Rampant crime, certainly can threaten the cohesiveness of a society. People will fear the crime, and thus they could lost faith in the government. But this is not the case with the kind of "victimless crimes" that we are dealing with in "the enforcement of morals."

Devlin is saying that immorality, conducted in private, harms the society. For instance, Devlin says a homosexual act committed behind closed doors causes real damage to the cohesiveness of society. And these acts will tend to lead to the eventual destruction of society. *Prima facie*, this does not seem very logical. Subsequently it is perhaps the most attacked point in Devlin's arguments.

Devlin describes his vision of society as held together with invisible bonds.

Society needs shared morals, or it will disintegrate
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals*, Oxford University Press, 1964, p. 10.
"...society means a community of ideas; without shared ideas on politics, morals, and ethics no society can exist. Each one of use has ideas about what is good and what is evil; they cannot be kept private from the society in which we live. If men and women try to create a society in which there is no fundamental agreement about good and evil they will fail; if, having based it on common agreement, the agreement goes, the society will disintegrate. For society is not something that is kept together physically; it is held by the invisible bonds of common thought. If the bonds were too far relaxed the members would drift apart. A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price."

Devlin goes on from here to say that if he is right about the above, then society is necessarily justified in passing laws against those acts which are considered immoral.

Society has a prima facie right to enforce morals
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals*, Oxford University Press, 1964, p. 11.
"If society has no right to make judgments on morals, the law must find some special justification for entering the field of morality: if homosexuality and prostitution are not in themselves wrong, then the onus is very clearly on the lawgiver who wants to frame a law against certain aspects of them to justify the exceptional treatment. But if society has the right to make a judgment and has it on the basis that a recognized morality is as necessary to society as, say, a recognized government, then society may use the law to preserve morality in the same way as it uses it to safeguard anything else that is essential to its existence. If therefore the first proposition is securely established with all its implications, society has a prima facie right to legislate against immorality as such."

Society is entitled to protect itself against internal dangers
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals*, Oxford University Press, 1964, p. 13.
"Society is entitled by means of its laws to protect itself from dangers, whether from within or without. Here again I think that the political parallel is legitimate. The law of treason is directed against aiding the king's enemies and against sedition from within. The justification for this is that established government is necessary for the existence of society and therefore its safety against violent overthrow must be secured. But an established morality is as necessary as good government to the welfare of society. Societies disintegrate from within more frequently that they are broken up by external pressures."

The enforcement of morals is necessary to keep society from disintegrating
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals*, Oxford University Press, 1964, p. 13.
"There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government and other essential institutions."

Hart attacks Devlin's claim.

That immortality will cause societal disintegration is disreputable
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 50.
"...it is not at all clear that for him the statement that immorality jeopardizes or weakens society is a statement of empirical fact. It seems sometimes to be an *a priori* assumption, and sometimes a necessary truth and a very odd one. The most important indication that this is so is that, apart from one vague reference to "history" showing that "the loosening of moral bonds is often the first stage of disintegration," no evidence is produced to show that deviation from accepted sexual morality, even by adults in private, is something which, like treason, threatens the existence of society. No reputable historian has maintained this thesis, and there is indeed much evidence against it."

Hart also contends that those persons who engage in "immoral" sex activities are not likely to be hostile to society in other areas.

Those who would deviate from sexual norms are not likely to be otherwise hostile to society
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 51
"It is of course clear (and one of the oldest insights of political theory) that society could not exist without a morality which mirrored and supplemented the law's proscription of conduct injurious to others. But there is again no evidence to support, and much to refute, the theory that those who deviate from conventional sexual morality are in other ways hostile to society."

Finally, Hart invokes Mill to contend that society can actually profit from deviations.

Society can profit from deviations from the prevalent morality
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 70-71
"...we must beware of following Lord Devlin in thinking of social morality as a seamless web and of all its provisions as necessary for the existence of the society whose morality it is. We should with Mill be alive to the truth that though these essential universal values must be secured, society can not only survive individual divergences in other fields from its prevalent morality, but profit from them."

Let us now go back to Devlin's arguments. From his above reasoning, he derives the idea that the suppression of vice is a proper role for law, and then he goes on to assert the primacy of this power by claiming that there are no theoretical limits to it.

The suppression of vice is the law's business/ There are no theoretical limits to the law's scope in morality
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals*, Oxford University Press, 1964, p. 13-14
" The suppression of vice is as much the law's business as the suppression of subversive activities; it is no more possible to define a sphere of private morality than it is to define one of private subversive activities. It is wrong to talk of private morality or of the law not being concerned with immorality as such or to try to set rigid bounds to the part which the law may play in the suppression of vice. There are no theoretical limits to the power of the State to legislate against treason and sedition, and likewise I think there can be no theoretical limits to legislation against immorality."

Devlin illustrates this last point by using the example of someone who sits at home and drinks alone. After considering his example, Devlin lends his support to the possibility of legislating against drunkenness.

The Drunkenness Example
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals*, Oxford University Press, 1964, p. 14
"You may argue that if a man's sins affect only himself it cannot be the concern of society. If he chooses to get drunk every night in the privacy of his own home, is any one except himself the worse for it? But suppose a quarter or half the population got drunk every night, what sort of society would it be? You cannot set a theoretical limit to the number of people who can get drunk before society is entitled to legislate against drunkenness."

(Not that I expect that to be Lincoln/Douglas topic anytime soon...)

Burton M. Leiser rings attention to a logical jump in Devlin's reasoning.

If an activity on a small-scale causes no harm, it should be allowed
Burton M. Leiser, Pace University, *Liberty, Justice and Morals*, Macmillian Publishing Company, 1986, p. 29
" Because some activity might lead to disaster if it were carried out on a large scale, it does not follow that that activity ought to be outlawed if it is carried out on a small and relatively harmless scale. When vast numbers of people use detergents, there is danger of eutrophication of lakes, and such use can therefore be properly outlawed. But if only a few people had been using detergents, there would be no such danger and there would be no justification for the law's interfering with their washing habits. The rights of privacy and of freedom of action deserve to be protected and should be interfered with only when private behavior ceases to be private and becomes a menace to the public or to some part of the public."

If Devlin is going to rely on the shared morality as the crucial standard in his theory he must provide some ideas of how this morality is to be ascertained. From the beginning Leiser has his doubts that such a community of shared values can be identified. Of course, if such values cannot be sufficiently identified, Devlin's statement carries no weight.

A community of ideas is difficult to identify
Burton M. Leiser, Pace University, *Liberty, Justice and Morals,* Macmillian Publishing Company, 1986, p. 27-28
" Devlin maintains that society is a community of ideas having a certain moral foundation. This premise is fundamental to all that follows in his argument, for his defense of society's right to enforce morals rests upon his assumption that a breakdown in that moral foundation threatens the very existence of society itself. But as we have seen, it is no easy matter to find the "community of ideas" to which Lord Devlin refers, at least in such a diverse society as the United States: one would venture to guess that a "community of ideas" could not be identified in Great Britain or in any large modern society."

One might conceive of opinion polls or scientific studies to properly determine the prevalent shared morality, but Devlin's idea of how to ascertain this morality is to appeal to a picture of the representative citizen; Devlin calls him the man in the jury box.

Society's morals can be ascertained throughout the standard of the man in the jury box
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals,* Oxford University Press, 1964, p. 14-15
"How are the moral judgments of society to be ascertained? By leaving it until now, I can ask it in the more limited form that is now sufficient for my purpose. How is the law-maker to ascertain the moral judgments of society? It is surely not enough that they should be reached by the opinion of the majority; it would be too much to require the individual assent of every citizen..."
" For my purpose I should like to call him the man in the jury box, …"

Lady Barbara Wooten, another of Devlin's critics, finds Devlin's reasoning concerning the man in the jury box to be circular.

Devlin's reasoning about the man in the jury box is circular
Burton M. Leiser, Pace University, *Liberty, Justice and Morals,* Macmillian Publishing Company, 1986, p. 18.
"Lord Devlin's thesis was also subjected to systematic attack in a series of lectures by Lady Barbara Wooten, who observed that his definition of a crime as an act about which the good citizen would feel guilty is circular, because one would presumably be able to identify a "good citizen" -- or as Devlin put it, the "right-minded man," or the "man in the jury box" -- only by determining whether he would feel guilty about the commission of such acts."

There is, apart from these theoretical wanderings, the empirical question to turn to. How much of the current legal system is based on morality? Leiser maintains that morality is vital to current law.

Law currently enforces morals
Burton M. Leiser, Pace University, *Liberty, Justice and Morals,* Macmillian Publishing Company, 1986, p. 20
"There can be no doubt that, historically at least, the law and morals were very closely related and that in many areas the law continues to look upon its function as the enforcement of morals, the reinforcement of moral standards in society, and the punishment of moral depravity. Moral principles are appealed to in determining not only what laws will or will not be enacted by legislators, but also what sentences will be imposed upon violators."

The Constitution embodies moral principles
Burton M. Leiser, Pace University, *Liberty, Justice and Morals,* Macmillian Publishing Company, 1986, p. 22
"The Constitution of the United States contains a number of provisions embodying moral judgments, including, among others, the Eighth Amendment's prohibition against "cruel and unusual punishments." Once could make a case for the view that a punishment's being unusual is not, in itself, a moral objection to such a punishment's being employed, and for the view that the assertion that a given form of punishment is unusual is not a moral judgment. But to assert that a punishment is cruel is to pass moral judgment on it; it is to say that the punishment is "inhuman" or "barbarous" or "uncivilized," all emotionally charged, evaluative terms.

Early on in his book, Devlin mentions that morality is the basis for many necessary laws. He contends that criminal law is based on morality. There are some very good laws, he says, that have no other justification than pure moral concerns. In the last quotation below Devlin provides us with a list.

Criminal law as we know it is based on morality
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals,* Oxford University Press, 1964, p. 7
"I think it is clear that the criminal law as we know it is based upon moral principle. In a number of crimes its function is simply to enforce a moral principle and nothing else. The law, both criminal and civil, claims to be able to speak about morality and immorality generally."

Morality is the only basis for many important laws
Sir Patrick Devlin, Lord of Appeal (England), *The Enforcement of Morals,* Oxford University Press, 1964, p. 7
"Thus, if the criminal law were to be reformed so as to eliminate from it everything that was not designed to preserve order and decency or to protect citizens (including the protection of youth from corruption), it would overturn a fundamental principle. It would also end a number of specific crimes. Euthanasia or the killing of another at his own request, suicide, attempted suicide and suicide pacts, dueling, abortion, incest between brother and sister, are all acts which can be done in private and without offense to others and need not involve the corruption or exploitation of others. Many people think that the law on some of these subjects is in need of reform, but no one hitherto has gone so far as to suggest that they should all be left outside the criminal law as matters of private morality. They can be brought within it only as a matter or moral principle."

After reading off the list of laws that are good and can be based only on morality, Devlin states that while some people want reform, no one would advocate the abandonment of all of them. Well, Devlin wasn't planning H.L.A. Hart.

Mill's supporters are not impressed by Devlin's list
Burton M. Leiser, Pace University, *Liberty, Justice and Morals,* Macmillian Publishing Company, 1986, p. 29-30
"Devlin notes that the law has long refused to sanction acts of certain sorts committed in private, even when the so-called victim gives his consent. Therefore, he argues, private homosexual acts between consenting adults may properly be forbidden by the criminal law. But those who adopt Mill's libertarian principle might well maintain that *all* acts of the same sort should be permitted, including not only homosexuality, adultery, and fornication, but suicide, euthanasia, abortion, and any others that Devlin might care to name. They are not impressed by Devlin's list of laws that are presently on the books forbidding consensual "immoral" acts done in private. They say that the list only shows how widely the law is abusing its powers. The issue, after all, is not what the law *does* forbid, but what the law *ought* to forbid."

Perhaps Hart's most effective attacks are the ones in which he denounces the morality of Devlin's outlook. By doing this, Hart is using some of Devlin's own medicine against him. Devin's stance is in support of enforcing morals, so it would seem that Devlin has the moral high ground here. But Hart very effectively attacks the morality of Devlin's program

Hart views enforcement as coercion. And such coercion must be justified by a higher goal. When the behavior being punished is harmful to no one, then coercion is unjustified.

Enforcement is coercion
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 57
"*Enforcement as coercion* - If we consider the first aspect of enforcement, namely, coercion by threats, a very great difference is apparent between inducing persons through fear of punishment to abstain from actions which are harmful to others, and inducing them to abstain from actions which deviate from accepted morality but harm no one."

Conformity is dubious value
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 57
"...where there is no harm to be prevented and no potential victim to be protected, as is often the case where conventional sexual morality is disregarded, it is difficult to understand the assertion that conformity, even if motivated merely by fear of the law's punishment, is a value worth pursuing, notwithstanding the misery and sacrifice of freedom which it involves."

Coercion is empty of moral value
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 57-58
"The attribution of value to mere conforming behaviour, in abstraction from both motive and consequences, belongs not to morality but to taboo. this does not mean that we cannot intelligibly attribute value to lives dedicated to ideals of chastity or self-denial. Indeed, the achievement of self-discipline not only in sexual matters but in other fields of conduct must on any theory of morality be a constituent of a good life. But what is valuable here is *voluntary* restraint, not submission to coercion, which seems quite empty of moral value."

Here's something that might prove helpful. It is a handy quote from Hart that says even if *On Liberty* is wrong in some respects, as far as it concerns *the enforcement of morals*, it is right on track.

Hart says Mill is right about enforcement of morals
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 5
"I do not propose to defend all that Mill said; for I myself think there my be grounds justifying the legal coercion of the individual other than the prevention of harm to others. But on the narrower issue relevant to the enforcement of morality Mill seems to me to be right."

Finally, we present a companion quote to the one above which sort of indicts generally anyone who has attacked Mill. Those who have criticized Mill, Hart says, have been ambiguous, vague, and/or inaccurate.

Mill's critics can't stand up to careful scrutiny
H.L.A. Hart, philosopher, *Law, Liberty and Morality*, Stanford University Press, 1963, p. 6
"They have in fact advanced many different arguments to justify the enforcement of morality, but these all, as I shall attempt to show, rest on unwarranted assumptions as to matters of fact, or on certain evaluations whose plausibility, due in large measure to ambiguity or vagueness or inaccuracy of statement, dwindles (even if it does not altogether vanish) when exposed to critical scrutiny."

The Deviants
I don't know what to call them, "the deviants" sounds so mean. Well, whatever we call them, they are the people that do whatever it takes to make society disapprove. Evidence from a sociologist, Edwin M. Schur, examines how these offenders are affected by the illegal status of the activities they engage in. Schur's evidence suggests that deviants are treated badly by society.

Schur reveals that because of the designation of illegality for their activities, many of these deviants develop negative self-images and then proceed to get involved in more crime. If this is indeed happening, then this is obviously achieving quite the opposite effect from what the moral enforcers wanted. If such a point can be substantiated, anyone who advocates the enforcement of morals must deal with this as a practical objection, but for Devlin, his theory is attacked. If legislated morality is for the moral cohesiveness of society, then his program does not work toward this, and thus loses its theoretical justification.

Because of illegality of activities, deviants develop a bad self-image
Edwin M. Schur, Associate professor of sociology, Tufts University, *Crimes Without Victims*, Prentice-Hall, 1965, p. 171-172.
"...the individuals involved tend to develop, in some degree, a deviant self-image. This is largely the result of the dominant social definition of their behavior as being outside the pale of respectability, and the more specific labeling of the behavior as "criminal" reinforces and heightens this process. It is, of course, very difficulty if not impossible to draw a clear-cut distinction between a deviant self-image and a criminal one. In a sense perhaps only differences of degree exist. Yet the criminalization of deviance may have an especially crucial influence on the individual's view of himself. Thus, the realization that they are considered criminals and --- even more significantly --- the need to act like criminals causes most drug addicts in this country to develop -- at the very least -- a pronouncedly antisocial outlook."

The laws can cause secondary crimes
Edwin M. Schur, Associate professor of sociology, Tufts University, *Crimes Without Victims*, Prentice-Hall, 1965, p. 172.
"The extent of deviant self-image seems, then, to be directly related to the degree of primacy taken on by the deviant role, or the extent to which deviant behavior comes to be elaborated into a role at all. An primacy relates closely to the *extent to which the deviant must, in order to satisfy the proscribed demand, engage himself in various instrumental and supportive activities."*

The following quote from Schur, which contends that society uses the deviants selfishly as scapegoats, could be used in combination with the Hart evidence that attacks the morality of Devlin's position.

Deviants are social scapegoats
Edwin M. Schur, Associate professor of sociology, Tufts University, *Crimes Without Victims*, Prentice-Hall, 1965, p. 176.
"On the individual level, punitive reactions to deviance may serve various kinds of functions. Every deviant is, in some sense, a psychological scapegoat -- a social sacrifice who complements and at the same time establishes the very possibility of conformity in other group members. The special characteristics of any one form of deviance help to determine the ease or difficulty with which it can provide (at a particular time and in a particular society) a basis for such sacrifice."

Now that we have some indication for the negative impact on the offenders, Glanville Williams tells us that the societal good must be high enough to outweigh the distress caused to the offenses.

Social good must outweigh the distress of the victim
Glanville Williams, Fellow of Jesus College, Cambridge, *The Sanctity of Life and the Criminal Law*, Alfred A. Knopf, 1957, p. 33.
"The law makes a number of simplified moral judgments and enforces them on the ground of the public interest in social conduct. To a large extent these rules of conduct can be fitted to the individual case by adjustment of the punishment or treatment, or discharge without punishment. But one element in the legal process is ineluctable -- the distress of mind caused to the offender by being summoned before a court, particularly where this involves much publicity in the press. This reinforces the argument that a legal inquisition into conduct is not justified on moral or religious grounds if no sufficient social purpose is to be served."

A Final Word on Applications to Debate Rounds

The enforcement of morals has been used as a topic by itself in Lincoln/Douglas, but the uses of the theory go beyond that. All of the "victimless-crimes" debates have the basis right here. The enforcement of morals can also be an alternative way of talking about the issue of privacy and government interference, as long as the interference is supported with a moral basis.

Several conflicts that are normally thought of as something else fall squarely under the theory of the enforcement of morals. This includes abortion and freedom of speech issues.

The issue can get sticky, however, when one side of the debate would refuse to consider the controversy an issue of the enforcement of morals. In the case of abortion, obviously the pro-life side does not consider their attempts to restrict or eliminate abortion to be legislating morality. They consider it to be a criminal code against murder. To the pro-life advocate, the crime is not "victimless." But the analysis still applies from the perspective of the pro-choice advocate, who maintains that the pro-life forces are simply trying to enforce their moral beliefs on the entire population. And that is perhaps why these two sides rarely understand one another. They are debating different subjects as far as they are concerned.

Pornography, a freedom of press issue, also deals with the enforcement of morals, but again there is a difference of perspective of whether morals enter into it. Right-wing opponents of pornography contend outright that pornography is a corrupter or morals. But feminists who seek to limit pornography do not claim a moral justification, rather they maintain that pornography has real victims that need protection. They say that the women who participate are victims, and even though these women consent to the activity, the feminist contention is that they cannot consent. They also say that all women are real victims of pornography because of the subjugation of women that it causes.

Similar differences of perspectives can be seen in the case of the legalization of drugs. The two sides have different opinions as to whether the crimes are truly victimless or not.

Many conflicts involve the enforcement of morals in an unacknowledged way, and the recognition of this in a debate round will hopefully prove to be very valuable.

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