This is an off case, but it’s just turns to the AC contention –

1. Terminal defense – your offense doesn’t affirm since at best it proves juries *can* nullify but it never proves they *ought* to. The implication of your offense is just permissibility which negates since the neg just denies an obligation.

2. Turn – history and empirics prove – jury nullification is discriminatory, violating the fourteenth and sixth amendments, **Tetlow:**

Tania Tetlow (Felder-Fayard Associate Professor of Law, Tulane Law School, and former Assistant United States Attorney. J.D., Harvard Law School), "Discriminatory Acquittal," William and Mary Bill of Rights Journal, 2009 AZ  
This article is the first to analyze a pervasive and unexplored constitutional problem: the rights of crime victims against unconstitutional discrimination by juries. **From** the **Emmett Till** trial **to** that of **Rodney King, there** i**s a long history of juries acquitting white defendants charged with violence against black victims.** Modem **empirical evidence** continues to **show[s]** a devaluation of black victims; **dramatic disparities exist in** death sentence and rape **conviction rates according to the race of the victim. Moreover,** just as juries have permitted violence against those who allegedly violated the racial order, juries use acquittals to punish female victims of rape and domestic violence for failing to meet gender norms. Statistical **studies show** that the **"appropriateness" of a female victim's behavior** is one of the most accurate **predict**or**s** of **conviction for gender-based violence. Discriminatory acquittals violate the Constitution.** Jurors may not constitutionally discriminate against victims of crimes any more than they may discriminate against defendants. **Jurors are bound by the Equal Protection Clause because their verdicts constitute state action**, a point that has received surprisingly little scholarly analysis. Finally, defendants have no countervailing right to jury nullification based on race or gender discrimination against victims. **The Sixth Amendment promises defendants an "impartial" jury**, not a partial one. Double jeopardy prohibits a direct remedy for the problem of discriminatory acquittal, and jury secrecy makes proof difficult. Yet recognizing the unconstitutionality of discriminatory acquittal would result in fundamental normative shifts. It would create a new constitutional language for prosecutors and judges to protect victims against jury discrimination within our existing criminal procedure. Most of all, the pervasiveness of discriminatory acquittals could no longer serve as a legitimating excuse for police and prosecutors to magnify the problem by conducting their own anticipatory underenforcement of the law.

Outweighs – **A.** the fourteenth amendment’s equal protection clause is a constraint on other civil rights since it governs how civil rights are supposed to be implemented, i.e, equally **B.** use your intuition – if we can’t resolve which legal violation is worse, you should condemn the legal violation that is racist and sexist before condemning the one based on mere technicality.

3. Nullification decreases legitimacy of the law, and rule of law is crucial to the Constitution, Supreme Court agrees, **Haynie:**

Erick J. University of Portland, Populism, Free Speech, and the Rule of Law: The Fully Informed Jury Movement and its Implications, 88 J. Crim. L. and Criminology 343 (Fall 1997) KK 11/6/15 \*Brackets in Original  
Rule of Law v. Rule of Men **At the core of American constitutional jurisprudence is the notion that ours is a government of laws**, not of men.84 Under the rule of law, citizen behavior is regulated not according to the passions and prejudices of human beings, but according to objective, published laws formally sanctioned by elected representatives through a pre-ordained process. As a federal judge sitting at criminal law aptly observed in 1941: Our American system represents the collective wisdom, the collective industry, the collective common sense of people who for centuries had been seeking freedom, freedom from the tyranny of government actuated or controlled by the personal whims and prejudices of kings and dictators. The result is a government founded on principles of reason and justice, a government of laws and not of men." Because **nullification instructions** give juries affirmative permission to ignore applicable legislative definitions of culpable conduct, such instructions **undermine the rule of law.** This reality was explained long ago **in** the **Supreme Court**'s landmark **decision** of **Sparf** and Hansen v. United States,8 7 which addressed the issue of jury nullification in the federal court system. Holding that it is the right and duty of the trial judge to instruct the jury to follow the law, **the Court wrote** that: **Public and private safety alike would be in peril if** the principle be established that **juries** in criminal cases **may**, of right, be told to **disregard the law** as expounded to them by the court, and become a law unto themselves. Under such a system, the principal function of the judge would be to preside and keep order while jurymen, untrained in the law, would determine questions affecting life, liberty, or property according to such legal principles as, in their judgement, were applicable to the particular case being tried.... We must hold firmly to the doctrine that in the courts of the United States it is the duty of juries in criminal cases to take the law from the court, and apply that law to the facts as they find them to be from the evidence.and The Ninth Circuit has criticized nullification arguments by counsel as violative of the rule of law in even stronger terms: If we... allow lawyers to appeal for jury nullification at will and indefinitely, and if we grant defendants a Sixth Amendment right to explain themselves in legally irrelevant terms-then we move to a "system" in which the loudest voice carries the day, in which the phrase "order in the court" literally has no meaning, and in which the rule of law has about as much force as the Cheshire Cat's grin. 89 Stated another way, the principal danger in giving juries an affirmative option to ignore the criminal law is that the jury is thereby transformed from a fact finding into a law-making body. In so doing, nullification instructions convert juries into junior varsity legislatures whose decisions undermine the impartial determination of justice based on published law.91 Thus, explicit nullification instructions would convey "an implied approval that runs the risk of degrading the legal structure below the level of integrity requisite for true freedom, for an ordered liberty that protects against anarchy as well as tyranny."9 2 By refusing to allow the nullification power to be explained to juries, courts better ensure that jurors use the nullification power sparingly, departing from the rule of law only where their own conscience naturally compels a veto of a judge's instructions.3

4. Nullification is undemocratic. It substitutes the opinion of one individual for the deliberated decisions of democratically elected legislature, **Haynie 2:**

Erick J. Haynie “Populism, Free Speech, and the Rule of Law:The Fully Informed Jury Movement and its Implications” Fall 1997 Journal of Criminal Law and Criminology Volume 88 Issue 1 *Fall* <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6948&context=jclc> WH

Closely related to their damaging effect on due process and the rule of law, nullification instructions also run contrary to democratic principles. As the D.C. Circuit observes, “[a]ny arguably salutary functions served by inexplicable jury acquittals would be lost if that prerogative were frequently exercised… [for] calling attention to that power could encourage the substitution of individual standards for openly developed community rules.” Indeed, the ultimate effect of **nullification instructions** is simply to **give twelve “random**ly selected **individuals** with no constituency but themselves” **an open invitation to frustrate the policies of** Congress or the state **legislatures, whose laws** in all probability will “**reflect** the **majority**’s **view.” The undemocratic force** of nullification instructions **is particularly strong given that it takes** not twelve but **one nullifying juror to prevent conviction** of a man guilty of the crime charged beyond a reasonable doubt. Nullification instructions are also inherently undemocratic because **they frustrate the right of the people to insure that those who violate their laws do not go without punishment.** Furthermore, jurors who are forced into the unaccustomed role of making macro-social choices would undoubtedly tend to “overlook the broader implications of their decisions.”

And the Constitution justifies democratic ideals, **Civitas:**

*CIVITAS: A Framework for Civic Education*, a collaborative project of the Center for Civic Education and the Council for the Advancement of Citizenship, National Council for the Social Studies Bulletin No. 86, 1991. You can obtain a copy of “Civitas” by calling 1-800-350-4223

**Core democratic values are** the fundamental beliefs and constitutional principles of American society, which unite all Americans. These values are **expressed in** the Declaration of Independence, **the U**nited **S**tates **constitution** and other significant documents, speeches, and writing of the nation. Below are definitions of some core democratic values. Source: *CIVITAS: A Framework for Civic Education*, a collaborative project of the Center for Civic Education and the Council for the Advancement of Citizenship, National Council for the Social Studies Bulletin No. 86, 1991. You can obtain a copy of “Civitas” by calling 1-800-350-4223 FUNDAMENTAL BELIEFS LIFE: The individual’s right to life should be considered inviolable except in certain highly restricted and extreme circumstances, such as the use of deadly force to protect one’s own or others’ lives. LIBERTY: The right to liberty is considered an unalterable aspect of the human condition. Central to this idea of liberty is the understanding that the political or personal obligations of parents or ancestors cannot be legitimately forced on people. The right to liberty includes personal freedom: the private realm in which the individual is free to act, to think and to believe, and which the government cannot legitimately invade; political freedom: **the right to participate** freely **in the political process, choose** and remove **public officials**, to be governed under a rule of law; the right to a free flow of information and ideas, open debate and right of assembly; and economic freedom: the right to acquire, use, transfer and dispose of private property without unreasonable governmental interference; the right to seek employment wherever one pleases; to change employment at will; and to engage in any lawful economic activity. THE PURSUIT OF HAPPINESS: It is the right of citizens in the American constitutional democracy to attempt to attain – “pursue” – happiness in their own way, so long as they do not infringe upon the rights of others. COMMON GOOD: The public or common good requires that individual citizens have the commitment and motivation – that they accept their obligation – to promote the welfare of the community and to work together with other members for the greater benefit of all. JUSTICE: People should be treated fairly in the distribution of the benefits and burdens of society, the correction of wrongs and injuries, and in the gathering of information and making of decisions. EQUALITY: All citizens have: political equality and are not denied these rights unless by due process of law; legal equality and should be treated as equals before the law; social equality so as there should be no class hierarchy sanctioned by law; economic equality which tends to strengthen political and social equality for extreme economic inequality tends to undermine all other forms of equality and should there fore be avoided. DIVERSITY: Variety in culture and ethnic background, race, lifestyle, and belief is not only permissible but desirable and beneficial in a pluralist society. TRUTH: Citizens can legitimately demand that truth-telling as refraining from lying and full disclosure by government be the rule, since trust in the veracity of government constitutes an essential element of the bond between governors and governed. POPULAR SOVEREIGNTY: **The citizenry is collectively the sovereign of the state and hold ultimate authority** over public officials and their policies. PATRIOTISM: Virtuous citizens display a devotion to their country, including devotion to the fundamental values upon which it depends. CONSTITUTIONAL PRINCIPLES RULE OF LAW: Both government and the governed should be subject to the law. SEPARATION OF POWERS: Legislative, executive, and judicial powers should be exercised by different institutions in order to maintain the limitations placed upon them. REPRESENTATIVE GOVERNMENT: The republican form of **government** established **under the Constitution is one in which citizens elect others to represent their interests.** CHECKS AND BALANCES: the powers given to the different branches of government should be balanced, that is roughly equal, so that no branch can completely dominate the others. Branches of government are also given powers to check the power of other branches. INDIVIDUAL RIGHTS: Fundamental to American constitutional democracy is the belief that individuals have certain basic rights that are not created by government but which government should protect. These are the right to life, liberty, economic freedom, and the “Pursuit of happiness.” It is the purpose of government to protect these rights, and it may not place unfair or unreasonable restraints on their exercise. Many of these rights are enumerated in the Bill of Rights. FREEDOM OF RELIGION: There shall be full freedom of conscience for people of all faiths or none. Religious liberty is considered to be a natural inalienable right that must always be beyond the power of the state to confer or remove. Religious liberty includes the right to freely practice any religion or no religion without government coercion or control. FEDERALISM: Power is shared between two sets of governmental institutions, those of the states and those of the central or federal authorities, as stipulated by the Constitution. CIVILIAN CONTROL OF THE MILITARY: Civilian authority should control the military in order to preserve constitutional government.

Outweighs **A.** democratic principles frame and underlie Constitutional provisions, so it’s pointless to follow a Constitutional rule that goes against its more fundamental purpose **B.** democracy is grounded not just in the amendments, but the Constitution proper as well – precludes their appeals to amendments because the amendments are just modifying afterthoughts.

5. Jury nullification violates federalism, grounded in article VI, **Simson:**

**According to article VI, “the Laws of the United States** which shall be made **in Pursuance [of the Constitution] shall be the supreme Law** of the Land; **and the Judges in every State shall be bound thereby, anything in the Constitution** or Laws of any State to the contrary notwithstanding.” **A right to nullify ensures**, however, **that federal law is supreme only when juries do not mind enforcing it.** The framers’ admonition to state court judges, moreover, makes little sense if jurors may, consistent with the Constitution, snub federal laws in favor of parochial and other preferences. **The supremacy clause and a right to nullify are** therefore **at cross-purposes.**

Outweighs – **A.** the federal government’s supremacy over the states is a precondition for federal documents like the Constitution to even have authority in the first place so the supremacy clause comes first **B.** federalist principles frame and underlie Constitutional provisions, so it’s pointless to follow a Constitutional rule that goes against its more fundamental purpose **C.** it’s more important than just amendments since federalism is in the Constitution proper and the Tenth amendment.

6. Jury nullification violates separation of powers. Simson:

Certain activities of one or another of the branches, however, have been found to encroach impermissibly on anothers realm, and jury nullification may be a candidate for a similar finding. Basically, by instructing juries that they may apply their own view of blameworthy conduct and ignore that codified by Congress, federal judges could be thought to extend the judicial branch’s power beyond the article III allocation and to infringe upon the prescriptive powers granted Congress by article I. **It is one thing**, as Chief Justice Marshall described the work of the courts, “ **to say what the law is,”** whether the law being interpreted is statutory or constitutional, **it is quite another to say what the law should be**-at least when Congress has already spoken on the matter. Once again, the **separation of powers** among the branches **is hardly marked by bright lines. But jury nullification may** just **overstep even those** decidedly **fluid boundaries.**Outweighs – separation of powers is so implicit in the Constitution’s organization and framework that the founding fathers agreed it’d be redundant to include an explicit provision.

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/separationofpowers.htm>

A/T Supreme Court cases

1. Crossapply **Haynie** – supreme court negates.

2. The Supreme Court’s power is self-constructed. In Madison v. Marbury, Supreme Court justice John Marshall decided to give himself and his court the power to judicial review – means that the argument that the Court has interpretational power is ultimately circular and ungrounded since that itself is based in a court decision.

3. Even if it’s true that the Court interprets the Constitution, it’s not educational to approach the round that way since appealing to their authority forecloses the possibility that we debaters practice interpreting the law and making legal arguments on our own, which is valuable.

4. Even if the Supreme Court interprets the Constitution, that still relies on the Constitution itself being the higher authority so if my offense proves the Constitution negates that just means the Supreme Court was wrong.

5. Supreme Court decisions are contradictory and they repeal old decisions all the time – means that we should just look to the stable, textual arguments.

6. Appeal to authority doesn’t matter – I cite expert legal scholar opinions too so at best it’s non-unique.

A/T Sixth Amendment affirms

1. Crossapply **Tetlow** – you violate the requirement that juries be impartial in the sixth amendment, which precludes since even if the jury is the sole determinant of guilt or innocence that jury must be an *impartial* one.

2. The aff causes court clogging and less reliable trials, **Frothingham:**

Stephen Frothingham. “Allowing Juries to Judge Law? Disastrous?” 12/17/10 SeaCoastOnline CC

**Under the bill,** judges could instruct **jurors** they **could acquit defendants - even if prosecutors proved the crime was committed** - if the jury disagreed with the law. New Hampshire would become the only state with jury instructions allowing so-called jury nullification, which also is banned in federal courts. The Senate judiciary committee voted 3-2 on Tuesday to not support passage of the bill, which has passed the House. Judges would have to give the jury instruction if the defense requested it, which legal experts said would be almost every time. Proponents said empowering juries would keep the three branches of government in [check](http://s.iktmmny.com/click?v=VVM6ODc1NjY6MzI4NTpjaGVjazo4NzQ1MDJlNzRiYjk4MzUzOGFiNmQ4NWJjMWViMWMzNTp6LTIyMDItNjk5NTAyNjU6d3d3LnNlYWNvYXN0b25saW5lLmNvbToyNTc5OTg6NmEwMjI4YTE5Y2Y4NjVlNjBhZjMzZTg2YzZjYTNhYmI6YzUwYjE1YTYwOTcxNGRhNTk1M2Y0YzZjZWMxYjBiMzE6MTpkYXRhX3NzLDcyOHgxMzY2O2RhdGFfcmMsMjtkYXRhX2ZiLG5vOzo0NDIxMjk3&subid=g-69950265-ef6357ca8b6248638d4286db7f1f6eae-&data_ss=728x1366&data_rc=2&data_fb=no&data_tagname=A&data_ct=image_only&data_clickel=link). "The people are the ultimate source of our operation as a government," the bill's sponsor, Rep. Richard Marple, R-Hooksett, told a state Senate committee on Tuesday. However, prosecutors, police and court officials said **the bill would** tip the scales of justice too far toward the defendant and **clog the court system with more trials, longer trials, and mistrials.** "The practical application of this bill would be disastrous upon our criminal justice system," Attorney General Peter Heed told the committee. Heed said the bill would turn trials into "mini-referendums" on laws. He noted that while the Legislature passes laws by a simple majority, **prosecutors would have to get the unanimous support of the jury to convict** someone under the law.

Two impacts **A.** means you violate the sixth amendments requirement that trials be speedy and **B.** means you overburden public defenders, who deal with an increased number of longer trails. And that hampers effective representation, another sixth amendment guaranteed right, Brunt:

Alexa Van Brunt, “Poor People rely on public defenders who are too overworked to defend them” Guardian [www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked](http://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked) CC

Money can buy you a great defense team, but what if you can’t afford one? **More than** [**80% of those charged with felonies**](http://goo.gl/juSlp5) **are** indigent. As a result, they are **unable to hire an attorney and** instead **rely on** representation by **a public defender.** Public defenders are, as a general matter, the hardest working sect of the legal bar. But our nation’s **public defender systems have long been plagued by** [underfunding and **excessive caseloads**](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf)**.** In Florida in 2009, the [annual felony caseload](https://www.acslaw.org/files/BennerIB_ExcessivePD_Workloads.pdf) per attorney was over 500 felonies and 2,225 misdemeanors. According to the US Department of Justice, in 2007, about **73% of county public defender offices exceeded the maximum** [recommended](http://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked#55994690)[**limit**](http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Defense#thirteentwelve) **of cases** (150 felonies or 400 misdemeanors). Too often, those who are poor receive lower quality defense than those who have the means to pay. The on-going decimation of public defense prevents defense attorneys from conducting “[core functions](http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam.pdf),” including factual investigation into the underlying charges. In a lawsuit brought in Washington State, it emerged that publicly appointed defense attorneys were [working less than](http://thinkprogress.org/justice/2013/12/05/3025441/federal-judge-agrees-overworked-public-defenders-warm-body-law-degree/) an hour per case, with caseloads of 1,000 misdemeanors per year. This state of affairs also [leads to](http://www.twincities.com/ci_15799495) exorbitant [trial delays](http://www.constitutionproject.org/wp-content/uploads/2012/10/139.pdf). Consequently, roughly [500,000](http://www.yalelawjournal.org/essay/pretrial-detention-and-the-right-to-be-monitored#_ftnref1) pre-trial detainees sit in jail year after year before being adjudged guilty of any crime. This makes a mockery of the innocent-until-proven-guilty principle so sacred to our system of justice. Just two years ago, then-Attorney General Eric Holder acknowledged that the country’s indigent defense systems were “[in a state of crisis](http://www.theatlantic.com/national/archive/2013/03/eric-holder-a-state-of-crisis-for-the-right-to-counsel/274074/).” Overworked and poorly prepared attorneys [were unable to provide effective representation](http://www.nlada.org/Defender/Defender_Gideon/Defender_Gideon_5_Problems) to those they counsel, in [violation of](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCEQFjAAahUKEwiv_Yf77YXGAhWIfJIKHXHcAFM&url=https://www.nacdl.org/WorkArea/DownloadAsset.aspx?id%3D22024%26libID%3D21994&ei=vo94Va-mNIj5yQTxuIOYBQ&usg=AFQjCNEndTL0MxU61mXkVDXZlnAFWIyvRg&sig2=_1HxzyxKB54ZnXCTRbpOHw) their ethical obligations to provide competent and diligent representation and their clients’ rights under the Sixth Amendment. Holder’s words came on the 50th anniversary of [Gideon v Wainwright](http://en.wikipedia.org/wiki/Gideon_v._Wainwright), in which **the Supreme Court held** that **states are constitutionally required to provide counsel to defendants unable to afford** to hire **their own.** Four years later, the Supreme Court [ensured](http://en.wikipedia.org/wiki/In_re_Gault) the same right for juveniles. Gideon prompted the widespread creation of public defender systems on which so many rely. Yet, the conditions underlying Holder’s condemnation of public defense systems persist. Though funding for indigent defense systems [vary](http://www.bjs.gov/content/pub/pdf/idsus0812.pdf) by state, such systems are unified in being cash-strapped. Louisiana has had ongoing problems with the funding of its public defender systems since at least 1986 ([controversially](http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor), Louisiana public defense [is supported by](http://www.nola.com/news/baton-rouge/index.ssf/2015/03/public_defender_baton_rouge.html) the court costs and fines paid by public defenders’ own clients). Ten judicial districts in the state are slated [to run out of funds](http://www.thenewsstar.com/story/news/local/2015/03/15/louisiana-faces-another-public-defender-funding-crisis/24814909/) to pay their public defenders as early as this month. Other parishes have already implemented “[restricted services plans](http://www.nola.com/news/baton-rouge/index.ssf/2015/03/public_defender_baton_rouge.html)” – meaning public defenders are refusing to take on new cases. Indeed, in recent years public defenders in [Missouri, Kentucky and Pennsylvania](http://www.npr.org/2014/05/29/316735545/why-your-right-to-a-public-defender-may-come-with-a-fee) have also refused to represent new clients due to an overload of cases. The costs of relying on such overburdened attorneys to provide the primary assurance of a fair trial are significant. 95% of criminal cases [end in](http://www.yalelawjournal.org/pdf/968_ob7yki3f.pdf) plea bargaining. Excessive caseloads contribute to this trend, and result in a “[meet ‘em and plead ‘em](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf)” system of justice, in which clients have little more than a brief conversation in the courtroom with a harried public defender before pleading guilty. In Chicago, where I practice as a civil rights litigator, people are [spending longer stints in jail](http://www.chicagoappleseed.org/wp-content/uploads/2012/06/CAFFJ-Pre-Trial-Delay-and-Length-of-Stay-Final.pdf) (an average of 56 days for those in on drug charges.) Part of the reason is the rampant use of continuances, a sign of an overworked public defender system. Consequently, pre-trial detainees incur a “trial [tax](http://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked#15870517)” – those who decide to fight their case are forced to stay in jail longer than those who plead guilty. Rikers island survivor Kalief Browder [faced this same dilemma](http://www.newyorker.com/magazine/2014/10/06/before-the-law). There are also clear racial implications to the poor health of public defender systems. Black people are [disproportionately caught up](http://sentencingproject.org/doc/publications/rd_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf) in the criminal justice system. In 2011, black Americans – 12% of the US population – constituted 30% of persons arrested for a property offense and 38% of persons arrested for a violent offense. This group bears the brunt of our public defender systems’ underfunding and overwork.

3. Nullification violates due process. **Simson 3**:[[1]](#footnote-1)  
Invoking the due process clause, courts have frequently invalidated statues that fail to provide adequate warning of punishable acts. “[A} statue which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application,” the Supreme Court has said, “violates the first essential of due process of law.” A right to nullify may be vulnerable to a similar void for vagueness attack. By authorizing the jury to place blame where it sees fit, **jury nullification**, even when made formally acquittal-oriented, **enhances the likelihood that defendants will be convicted of conduct** that **they are not on notice to avoid.** **The jury in effect passes a new statue and proceeds to convict the defendant for its violation.** Indeed, jury nullification invites convictions under statues not simply vaguely known to defendants but not known to them at all. A court might be unwilling to adopt this logic to strike down a right to nullify, however, because attacks of this sort have traditionally been reserved for statues. But any hesitation on this score would, I think, appropriately be overcome. For surely a part of the process-which is what jury nullification most assuredly is-that produces **an unfair conviction [that] offends the due process clause** no less than a statue yielding a like effect.

Overview to the framework –

1. Your framework justifies terrible atrocities; the Constitution didn’t ban slavery for the first 100 years of its existence and at one point justified blacks being worth three fifths the value of whites. Legalism at best *sometimes* condemns oppression – to assume it always will is to wishfully believe the government is perfect. This is a reason to reject the framework – if your framework syllogism isn’t stronger than our intuitive objection to oppression, that’s a reason to side with our intuitions since logic is based upon the appearances of our intuitions to begin with.

2. The constitution provides constitutional means by which to amend it – means that the only difference between an aff and neg ballot is an amendment so this proves you can never generate stable offense.

3. Your framework leads to incoherent ethical conclusions – the text of a document can never be the source of normativity. For example, what would it mean if the Constitution were to have a grammatical error? The impossibility of ascribing moral properties to grammatically imperfectly written documents concedes that a physical document like the Constitution can never have truly binding authority.

4. Double-bind – either **A.** the constitution’s rules are grounded in more fundamental notions of morality, which means following it just begs the question of what is moral and the NC comes first or **B.** the constitution’s rules are arbitrarily determined which means there is nothing wrong with amending them to be whatever we want them to be.

A/T specific framework arguments *(please don’t be reliant on framework blocks – you need to respond to specific warrants, but I wrote these just to give an example of the types of arguments you can make)*

A/T function of the U.S. is the constitution

1. Commits the is-ought fallacy – just because something’s function is something doesn’t mean that ought to be the function.

2. The actor in the resolution is probably jurors and not the government because the resolution is a question of whether nullification ought to be used, and that’s ultimately the decision of jurors. Thus, the function of the U.S. government is wholly separate to the function of the jury.

1. Gary Simson. 54 Tex. L. Rev. 507 (1975-1976). Jury Nullification in the American System: A Skeptical View; Simson, Gary J. [↑](#footnote-ref-1)