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**“WHAT DOES IT ALL MEAN, BASIL?”¹:
INTERPRETING RESOLUTIONS WITH PRINCIPLES OF JUDICIAL
INTERPRETATION**

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Introduction

In modern competitive interscholastic debate, issues of topicality are frequently conflated with issues of theory. Fundamentally, topicality is an argument challenging an opponent’s position as not sufficiently related to the resolution. Theory, on the other hand, is an argument positing that a proposed rule (as opposed to a rule that has been formally adopted for debate) regulating a strategy or a tactic should be adopted, theoretically speaking. Depending on the particular organization(s) under whose rules a tournament is hosted, topicality can lie either on the line between a formal rule and theory, or clearly on the theory-side of the line. Some organizations have adopted a formal rule that requires debaters to debate the resolution or topic chosen by the organization and its members. Other organizations formally adopt a resolution, but do not expressly require judges to enforce a rule that requires competitors to discuss (or even mention) the resolution or something that is resolution-adjacent. Even when a formal organizational rule requires topicality, topicality resembles theory: a proponent of a topicality charge must propose a definition or interpretation should be adopted, theoretically speaking, to determine which arguments and policy proposals are topical. Whether topicality is a formal organizational rule or is posited as theory, topicality inherently asks the same question about the resolution, which is, as Austin Powers once formulated it, “What does it all mean, Basil?” The further that competitive interscholastic debate steps away from the topicality-as-a-rule paradigm, the more common it is for competitors and judges to confuse the ultimate issue that is to be resolved by the competitors in the debate.

¹ Austin Powers: The Spy Who Shagged Me (1999).

This article is not primarily intended to criticize such steps away from having a predictable topic of discussion. It is for members of competitive interscholastic debate organizations who believe that utilizing the agreed-upon (or, at least, consented-to) process for selecting resolutions is not a wholly pointless exercise. Those who have witnessed competitive interscholastic debate evolve over the years have likely noticed that a primary driving force of debate's evolution is the willingness or desire of judges to encourage such evolution by presuming that any tactic or rhetorical strategy (usually excluding overt hostility) is valid. One reason why judges (frequently themselves students in college or beyond) have become increasingly less willing to give serious weight to topicality arguments is the absence of objective, logical principles governing such arguments. Topicality, like pure theory, is almost always argued in terms of the tired standards of "limits" and "ground," sometimes modified by the not-always-accurate modifiers "predictable" or "fair," and the supporting analysis for which is nearly always a self-serving, conclusory sentence or two.

Principles of judicial interpretation, also referred to as canons of construction, could supply the needed objective and logical principles to improve the educational and entertainment value of topicality debates. Principles of judicial interpretation help courts resolve how to interpret the U.S. Constitution, federal and state statutes, administrative rules, contracts, wills, and other legal documents. Courts use these principles to decide whether or not a case is governed by a provision in the relevant law. A significant portion of the brightest minds in the United States and in other countries rely upon (and have for centuries relied upon) these principles to answer a nearly identical question that topicality arguments seek to answer: "What did the governing/organizational body mean when they said [insert relevant word or phrase here]?"

Why, then, are these principles almost entirely missing from competitive interscholastic debate, the primary purpose of which is to educate students and provide training in this oft-mentioned "critical thinking" thing? Incorporating principles of judicial interpretation, which are described more fully below, into topicality debates could help to better educate students about addressing issues proposed to them in the future in a range of activities, whether the activity is answering an essay question on an exam or arguing an issue of statutory construction before the Supreme Court of the United States. It could also infuse

topicality debates with the novelty and intellectual challenge that engages and entertains brainiac lawyers and judges, who make up many of our society's critical thinking experts.

The Problem of Collective Intent

Principles of judicial interpretation, when applied to understand the meaning of collectively generated statements and provisions found in constitutions and statutes, have guided courts for centuries in discerning the "collective intent" of a governing body. In ordinary interpersonal conversations, it usually is fairly easy for one participant to ask the other what they intended to mean by the use of a particular word or phrase. Inquiring into the meaning of a word or phrase becomes a bit more complicated when the "speaker" is more than one person or when the person who used the word or phrase is unavailable.

A basic purpose of legislatures in the United States is to pass general laws that enable society to function. In the United States, and in many other countries, legislatures pass laws that have general applicability. In some cases, a legislature is constitutionally prohibited from passing laws that are specific to an individual or a specific occasion. For example, the U.S. Constitution prohibits legislative bodies from passing bills of attainder, or laws that are so specific that it declares an individual guilty of a crime. However, legislatures may criminalize certain types of conduct, like murder and theft. But because language is not always subject to mathematical precision, there are inevitably cases that fall close to or on the line, and courts must "zoom in" on the line, determine where the line is drawn, and then declare on what side of the line that the case falls.

One such question might be, for example, "What is a 'lane' of traffic?" Although the meaning of a "lane" of traffic might seem obvious upon a first cursory consideration, this issue recently was litigated to the highest court in Texas.² In *Mahaffey v. Texas*, the Texas statute at issue criminalized a driver's changing a "lane" without using a turn signal. The Texas Legislature, which regularly convenes for only four months every two years, did not see the need to waste legislative time and resources to define what it meant by a "lane" of traffic. A

² 364 S.W.3d 908, 909 (Tex. Crim. App. 2012).

driver who was pulled over for violating this law challenged the meaning of “lane” after he failed to signal his intent to change lanes when two lanes merged into one. On one hand, as the majority of the court held, the lane obviously merged with another lane, so there was no need to use the turn signal to signal his intent if there was only one way for him go. Dissenting judges would have held that because there was a sign posted that read, “Lane ends. Merge left,” the lane in which the driver was driving ended and therefore, there was a new lane created and the driver committed a criminal offense by not using his turn signal. All judges implicitly agreed, however, they were trying to answer the following question, “What did the Texas Legislature mean when it used the word ‘lane’?” Courts all over the United States decide similar issues on a daily basis, and while the “What is a ‘lane’ of traffic?” case dealt with a minor traffic violation, courts sometime decide issues of statutory and constitutional interpretation involving millions of dollars and individuals’ fundamental rights.

The problem for which the principles of judicial interpretation were developed was to determine the collective intent of an organized, governing body that is not structured and is unavailable to answer the question. A primary function of courts is to decide how the general laws passed by a legislature apply on a case-by-case basis. Courts in the United States are not structured to pose inquiries to the legislature and therefore must rely on objective, logical principles to answer questions asked by parties, “What did the legislature mean by using that word or phrase?”

Courts in the United States decide cases under the assumption that the legislature that enacted the statute, whether it is a state legislature or Congress, acted rationally and with purpose for each word and phrase used in the statute. This is based on the premise that the state and federal governments in the United States receive their authority from the will of the governed and the expressions of the legislatures are thereby expressions of the will of the people. However, it is not always true that Congress and state legislatures act rationally and draft laws very carefully. And this happens because the legislative process subjects policy proposals to many procedural hurdles—such as committee votes, votes by two houses, etc.—before it becomes law, and therefore many bills are modified or watered down, and use language a legislative drafter chose as a tactic to get the bill passed into law.

When individuals or groups of individuals come together and agree to be governed by an organization, such as a government, they consent to having elected individuals represent their interests. Frequently, they also directly vote on policies and rules to govern the activities of the members. This is true of governments, but it is also true of non-governmental organizations, including business corporations, non-profit organizations, and even competitive interscholastic debate organizations. Students join debate teams of schools, and schools and sometimes their students are members of competitive interscholastic debate organizations. The organizations create rules that govern the activities and behaviors of debaters, for example, by creating rules for advancing in competitions and speech times. Because debaters compete under rules of an organization, and their conduct is limited by the organization's rules, debaters—like individuals and businesses in society—frequently wonder: “There’s a rule that applies to me. ‘Whopty doo. What does it all mean, Basil?’”

As courts are unable to ask legislatures what they meant by the use of a particular word or phrase in a statute, so too are judges of competitive interscholastic debates unable to ask debate organizations what their topic selection committee meant by the use of a word or phrase in a resolution and whether the case argued by a competitor falls under the meaning of the word or phrase used. Debaters who are charged with not presenting a topical plan are frequently in an analogous situation as the driver in *Mahaffey* who was charged with violating a law requiring signaling intent to change lanes. But unlike the courts, debate judges—usually from a position of ignorance—tend to thumb their noses at the idea that any definite meaning was intended by the draftors of the resolution. Students and judges can and should learn from the judicial system that there are logical methods of tackling the problem of collective intent.

Principles of Judicial Interpretation

Principles of judicial interpretation were developed hundreds of years ago by courts in a two-step analytical process to resolve disputes, and the same analytical method is still used today. The first step is to answer the question, “What did the author mean when it used a word or phrase in the applicable legal document?” In this step, courts apply principles of judicial interpretation, assuming the words and phrases used are the best indicators of the author’s intent. Courts, frequently

hearing from at least two opposing parties (if not more), consider competing interpretations that help the court quickly complete the second step. The second step is to answer the question of whether the controlling legal document, whether it is a statute, contract, judgment, will, etc., includes or excludes the case, issue, or claim.

There are several fundamental principles of judicial interpretation. Courts generally begin answering the question of intent by considering the plain meaning of the words and phrases themselves. When the plain meaning is clear, that meaning should be followed regardless of whether it has positive or negative consequences in terms of its effect on public policy. This is because courts defer to the public policy determinations made by the legislature. The Supreme Court of the United States has stated this “cardinal” principle as follows: “[W]herever the will or intention of the lawmaking power is declared in plain and unequivocal terms, that will or intention must be followed—absolutely followed.”³ The plain meaning is the one that can be understood by the ordinary meaning of the words, but there is an exception for when a legislature uses a word with a technical meaning.⁴

Several other principles of judicial interpretation follow from or are similar to this cardinal principle. Courts reject definitions and interpretations of a word that would render another word or phrase in the provision meaningless or superfluous.⁵ Authors of legal instruments and statutes are presumed to have acted with purpose in using every word, phrase, and punctuation mark included in the instrument or statutory provision.⁶ Courts must, if possible, “construe a statute to

³ *Binns v. Lawrence*, 53 U.S. 9, 17, 13 L. Ed. 871 (1851).

⁴ *Phelps v. Harris*, 101 U.S. 370, 381, 25 L. Ed. 855 (1879).

⁵ See *Helvering v. Ohio Leather Co.*, 317 U.S. 102, 108, 63 S. Ct. 103, 107, 87 L. Ed. 113 (1942) (rejecting an interpretation of Internal Revenue Acts because it would have rendered other words meaningless).

⁶ See *Cooper Indus., Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 158, 125 S. Ct. 577, 579, 160 L. Ed. 2d 548 (2004).

give every word some operative effect.”⁷ Courts even consider standards of punctuation when interpreting statutes.⁸

Furthermore, if the same word is used in the same provision or statute, the word will be given the same meaning unless it is clear from a holistic reading of the entire legal instrument or statute that the author intended otherwise.⁹ Conversely, when the author chooses to use two related, but different words in the same sentence or provision, courts will defer to giving more weight to an interpretation that accounts for any differences in the meaning of the two words.¹⁰ The use of two related words can also result in courts construing the broader term more narrowly. For example, in *Yates v. United States*, the Supreme Court explained that courts “avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.”¹¹ Courts also give great weight to considerations that a proposed interpretation might defeat one of the fundamental purposes for which the statute was enacted.¹² While this is not an exhaustive list of principles of judicial interpretation, the principles and cases demonstrate that, over hundreds of years, the Supreme Court of the United States has relied upon and developed principles to determine the collective intent of a legislative body or the intent of someone who is unavailable to answer questions of intent.

When interpreting statutes, courts are generally hesitant about considering a bill’s legislative history (such as comments made by legislators or amendment history) unless the words used in the statute are ambiguous. Courts will sometimes conclude a statute is ambiguous when the application of principles of judicial interpretation leave the two competing interpretations, essentially, at a tie. After

⁷ *Id.*

⁸ *U. S. v. Naftalin*, 441 U.S. 768, 774, 99 S. Ct. 2077, 2082, 60 L. Ed. 2d 624 (1979).

⁹ *Abbott v. Essex Co.*, 59 U.S. 202, 216, 15 L. Ed. 352 (1855).

¹⁰ *Cf. id.*

¹¹ 135 S. Ct. 1074, 1085, 191 L. Ed. 2d 64 (2015) (“‘Tangible object’ is the last in a list of terms that begins ‘any record [or] document.’ The term is therefore appropriately read to refer, not to any tangible object, but specifically to the subset of tangible objects involving records and documents, i.e., objects used to record or preserve information.”).

¹² *Conkright v. Frommert*, 559 U.S. 506, 516, 130 S. Ct. 1640, 1648, 176 L. Ed. 2d 469 (2010).

concluding that two competing interpretations are equally valid, courts will then consider legislative history such as what the specific author who proposed the bill intended the bill to mean.¹³ Such statements can be discerned by legislative debate or a bill analysis.

Applicability to Topicality

Competitive interscholastic debate is, just like the courts, is an adversarial dispute resolution system. In courts, two sides that have adverse interests seek a resolution of their dispute by a judge. Judicial judges must resolve disputes such as whether the plaintiff (in a civil case) or government (in a criminal case) is entitled to the relief they seek based on arguments and evidence. In both civil and criminal cases, the side that is seeking to change the status quo—either by having a court order that the other side pay it money or by having the court convict and sentence a defendant—must file a document with the court that provides the opponent fair notice of what the dispute will be about. In debate, two sides that have adverse positions seek a resolution of their dispute by a debate judge. A debate judge resolves the dispute based on the arguments and evidence presented by the two sides. Because there are no filings of documents in debate, the topic is set by a process that models the drafting and passing of laws: by direct votes or a selection by people in the organization entrusted to make such decisions.

Like a legislature is entrusted by the governed to express the will of the governed in regulating society, competitive interscholastic debate organizations are entrusted to provide not only similar rules governing the conduct of debaters, but also the topic to be resolved by the judge based on the arguments and evidence of competitors. Like a judicial judge is unable to ask a legislature or a deceased individual about its intent, debate judges generally cannot contact the debate organization for a final determination of whether a particular plan or case is topical. Debate judges, like judicial judges, are often called upon to engage in the two-step analytical process of determining the better of competing interpretations

¹³ See *Burlington N.R. Co. v. Ok. Tax Comm'n*, 481 U.S. 454, 461, 107 S. Ct. 1855, 1860, 95 L. Ed. 2d 404 (1987).

of the resolution and, then, to determine whether the case falls under that interpretation.¹⁴

Like the principles of judicial interpretation help judicial judges to resolve the issue of competing interpretations in judicial disputes, they could help debate judges, too, in resolving issues of competing interpretations of resolutions in debate. The applicability of certain principles will necessarily depend on the particular debate organization and the debate format.

Consider the following competing interpretations for example:

“Resolution: “Resolved: A just society ought to presume consent for organ procurement from the deceased.”

Affirmative Case: According to the Oxford English Dictionary, an “organ” is “a large musical instrument having rows of tuned pipes sounded by compressed air, and played using one or more keyboards to produce a wide range of musical effects.” A just society is one that promotes the arts, including music, while not violating the rights of people. The deceased do not have rights, which only belong to living beings, and therefore, the rights of the deceased are not violated by presuming they would consent to society procuring their organs. If society is not allowed to procure organs from the deceased, organs might be not put to use. It is more likely that the organs would be played by the living than by the deceased. Playing organs promotes music, and promoting music is way of promoting the arts. Therefore, a just society ought to presume consent for organ procurement from the deceased.

Negative Topicality Argument: According to the Oxford English Dictionary, an “organ” is “a part of an organism that is typically self-contained and has a specific vital function, such as the heart or liver in humans.” The affirmative’s case is not topical because “a large musical instrument” is not “a part of an organism . . . that

¹⁴ Some debate judges require “in-round abuse” and will not ordinarily consider competing interpretations. But this is likely based on the questionable assumption that the only reason the debate community vets and votes on a topic is to prevent whatever a debate judge believes is “in-round abuse.” This approach is fundamentally at odds with how and why topics of debate are selected not only in debate, but also in social and professional contexts.

has a specific vital function, such as the heart or liver in humans.” It is better to interpret “organ” in the resolution as a biological organ rather than a musical organ.”

In this debate, the negative might be immediately inclined to resort to the “go to” arguments of limits and ground for the purposes of creating a fair and educational debate. Arguably, the traditional limits and ground arguments prefer the affirmative interpretation. Arguments in favor of presumed consent for musical organs would be largely limited to quality of life whereas biological organs would include both quality and quantity of life. Quantity of life advantages implicate a broader spectrum of moral and philosophical arguments, and the scientific aspect of procuring biological organs would also expand both sides’ research burdens about the effectiveness and disadvantages of various biological organ procurement methods. If the negative argued the musical organ interpretation was too limiting, then it might be difficult to argue that both musical and biological organ procurement would not preferred to just one or the other. Regarding ground, which would be more narrowly circumscribed by the affirmative interpretation and thus more predictable, the affirmative interpretation seems to provide a fair (albeit equally undesirable) division of ground between, for example, “organs promotes interest in the arts” (a relatively weak position) versus “organs are the worst musical instruments ever” (a relatively subjective position). The “go to” limits and ground standards are often not the best way to address resolitional interpretations that (for some reason), simply cannot be what was intended when the particular organization selected the topic.

What about principles of judicial interpretation? Two applicable principles are the plain-language principle and “each word must be given effect” principle. These principles would not involve immediately looking to “limits” or “ground” for answers, but require looking back at the other words and phrases in the resolution. The resolution states, “A just society ought to presume consent for organ procurement from the deceased.” One word that might stick out upon reconsideration of the resolution’s wording in light of the musical organ interpretation might be “from.” According to the Oxford English Dictionary, “from” is a preposition “indicating the point in space at which a journey, motion, or action starts.” “From,” according to that definition, refers to a physical space. Read in context, the definition would suggest the procurement of the organ must

be procured out of the physical space that is the deceased, rather than the space belonging to the deceased. The affirmative's case in this hypothetical concedes the deceased don't have rights, and thus should not have the rights to their worldly possessions. In other words, a deceased individual is not composed of physical space other than the body of the deceased individual. Therefore, the affirmative's interpretation would render the word "from" meaningless by presuming the deceased would have the right not to consent to what is done with their property. As such, giving effect to the word "from" requires the procurement start in the physical space of "the deceased," which would include biological organs, and not the deceased's estate, which would not include internal organs, but could include, perhaps, a musical organ.

The poor wording of the organ procurement resolution might render the word "organ" an ambiguity, for which extra-textual sources (e.g. topic literature, statements from the organization). One limitation of using principles of judicial interpretation that require resorting to extra-textual sources is that, unlike a the congressional record that contains a specific set of statements made by legislators, there usually is not any similar indication of what the debate organization intended.

Other principles could be used for example to consider the differences in wordings between topics year after year. For example, the difference between the resolution's use of "significantly" and "substantially" in policy debate topics or "should" and "ought" in Lincoln-Douglas topics. In the latter example, debaters frequently define both as expressing a moral obligation and both can be accurately defined as such. Using the principles of judicial interpretation, there is a strong argument to be made that "should" should not be interpreted as expressing a moral obligation where the etymology of "ought" more strongly expresses that moral obligation. This argument could be strengthened by using another principle of judicial interpretation that words should be construed in light of context, and where "should" is followed by some policy action, the principles of judicial interpretation strongly support more of a policy-based discussion rather than morality-based one (assuming the two can be clearly distinguished in the particular debate).

One difference between debate resolutions and statutes is that statutes are frequently passed in response to a societal problem whereas debate resolutions are

not. For instance, the United States Congress passed the Civil Rights Acts and its subsequent amendments to address the problem of discrimination in society. Debate resolutions are not chosen to address any particular problem in society because debates do not result in actual policy changes. This difference might affect the applicability of certain principles of judicial interpretation in debate, but ultimately resolutions are selected for a purpose that could help inform the applicability of other principles of interpretation. A primary example would be that competitive interscholastic debate is principally intended to educate students. As such, the principle of judicial interpretation relating to effectuating the purposes of a statute, could be (and frequently is) applied as a standard relating to effectuating the educational purposes of debate.

Revisiting Collective Intent in Competitive Interscholastic Debate

Organizations and their members choose the resolutions for debate. Whoever drafts the resolutions chosen by organizations and members intends to use the chosen words and phrases to have some meaning. When competitors and debate judges ignore that such intent exists, the objective, intended meaning of the resolution becomes a non-consideration when competing interpretations are argued and evaluated. Grounds and limits standards, while valid considerations, often lead judges to prefer to an interpretation that is patently destructive to the educational value of debate. In the above example of the “bodily organs” versus “musical organs” debate, the limits and ground arguments tend to favor the “musical organs” definition. Other debate judges—many of whom eschew intervention—might feel compelled to interject some subjectivity or unspoken personal preference in rejecting the limits and ground arguments or declining to objectively evaluate the arguments. A debate judge’s desire to so interject would likely emanate from the gut feeling that, if put into words, would be, “The ‘musical organs’ interpretation simply cannot be what the organization and the members of the organizations intended when they wrote and selected the resolution.” Thus, considering only ground and limits without considering the organization’s intent in drafting and voting to approve resolution can be quite inadequate when evaluating competing interpretations.

Competitors and debate judges frequently disregard “framers’ intent” arguments based on the assertion that “We don’t know who the framers are, and there is no

way to know what they intended.” Some debate judges are even receptive to the argument that even if the intent of the organization was known, the intent should be disregarded for considerations of ground and limits. While it is true that many debate organizations hide the topic selection and wording process from the view of the members, the unavailability of the drafters to answer questions of topicality on a case-by-case basis simply demonstrates how interpreting resolutions is analogous to courts interpreting laws. The best way to determine what an organization intended when selecting a debate topic is to examine the plain meaning words and phrases in the resolution viewed as a whole, just as courts examine the plain meaning of words and phrases in a statute. If someone were to say, “I’m hungry,” It would be somewhat absurd for a recipient of that message, absent some contextual basis suggesting the speaker was lying, to assert, “There is no way to know what the speaker intended.” When communicating, humans operate under the initial presumption that communications from other humans are intended to be honest or true. The best place to start when trying to understanding the intent of any speaker’s message is from the plain meaning of the words and phrases the speaker uses as reflective of the speaker’s intent.

The argument that debate judges should reject the intent of the organization in drafting and voting on legislation reflects a much bigger concern than mere ignorance of principles of judicial interpretation—it reflects ignorance of, if not disdain for, democratic processes and voluntary association. A large part of the competitive interscholastic debate’s educational value is the opportunity to learn about societal institutions, including governmental and non-governmental organizations, and the rules regulating them. Like students who graduate from high school are often not educated about or aware of their rights and duties as American citizens, student competitors who are members of debate organizations remain unaware of their rights and obligations as members of debate organizations. Educators who believe in the educational value of competitive interscholastic debate miss an opportunity to educate and provide perspective to student competitors when the students are not taught about the structure and rules of the organizations that facilitate interscholastic debate competitions.

Conclusion

Debate organizations that are responsible for drafting resolutions intend to express a particular proposition when choosing the wording of the resolutions. Although the drafters of the resolution are unavailable to competitors and debate judges to answer questions about their intent, their unavailability does not mean there are no reliable principles by which the collective intent of the drafters can be discerned. Judicial judges frequently rely upon well-established principles of judicial interpretation to discern the collective intent of governmental bodies that have drafted laws. Instead of relying almost exclusively upon the typical standards of ground and limits, competitors and debate judges should consider learning about and utilizing rules of judicial interpretation to analyze competing interpretations of resolutions.