# Top of the AC

I affirm resolved: In the United States criminal justice system, jury nullification ought to be used in the case of perceived injustice.

*All cards are bracketed for grammar and efficiency.*

## Part 1 is *the resolutional advocacy*.

The resolution isn’t a policy question – rather, the actor is the individual juror, who is faced with injustice. They’re the only ones who can actually perceive injustice and do nullification. **Black’s Law[[1]](#footnote-1):**

Jury **Nullification [is] A jury's** knowing and **deliberate** rejection of the evidence or **refusal to apply the law** either **because** the jury wants to send a message about some social issue that is larger than the case itself or because **a result dictated by law is contrary to the jury's sense of justice**, morality, or fairness**.** Jury nullification is a discretionary act, and is not a legally sanctioned function of the jury.  It is considered to be inconsistent with the jury's duty to return a verdict based solely on the law and the facts of the case.  The jury does not have a right to nulification, and counsel is not permitted to present the concept of jury nullification to the jury.  However, jury verdicts of acquittal are unassailable even where the verdict is inconsistent with the weight of the evidence and instruction of the law.

Prefer this: **A) Framers Intent:** My actor is implied by the resolutional action itself; they’re the only ones who can take the action, meaning other interps arbitrarily insert other actions into the resolution outside the scope of nullification. Any other actor would also be un-grammatical since the resolution is written in the passive voice; if the framers intended for it to be acted upon by an external body it would have been in the active voice. Framers Intent is key to education since it’s a crucial for writing in the real world and key to fairness since it’s easiest to prepare for arguments that are grammatically correct. **B) Real-World:** Instead of rehashing irresolvable debates about policy, we should discuss our own evaluative tendencies as that will actually have relevance in the real world if we end up on a jury. Real world has the strongest link to education since it is the only impact relevant post-debate, **C) Resolvability:** The CJS as a whole does not have a uniform natural form to it since it is comprised of distinct subjects. As such, its form is merely the combining of individuals; either a state actor is irresolvable, or it devolves into the general form of the humans that comprise it; in this case, the jurors. **Also**, every argument in Part 2 will justify why an objective morality for collectives is impossible, making it impossible to debate. Resolvability is key since every debate needs a winner. **D)** **Topical Education:** Almost every debate topic talks about policy action by discussing actions of institutions, but the individual nature of this resolutional action gives us unique access to individual ethics that we can’t have on other topics. Framer’s intent is clear – rather than repeating the last time this topic was used, when the resolution asked about “just checks on government,” the addition of “***perceived*** injustice” lets us discuss how individuals should act. Key to education since it's the unique educational benefit of actually debating this topic.

## Part 2 is *evaluative subjectivity*.

We have no facilities to differentiate between what we perceive to be injustice and some objective conception of injustice – subjectivity means they’re one and the same.

**First**, we are only able to perceive our own experiences. **Nagel[[2]](#footnote-2):**

In the pursuit of this goal, however, even at its most successful, something will inevitably be lost. **If we try to understand experience** from an objective viewpoint that is distinct from that **of subject[s]** of the experience, **then** even if we continue to credit its perspectivial nature, **we will not be able to grasp its** mostspecific **qualities** unless we can imagine them subjectively. **We will not know** exactly **how** scrambled **eggs taste to a cockroach even if we develop a detailed** objective phenomenology of the cockroach **sense of [their] taste.** When it comes to values, goals, and forms of life, the gulf may be even more profound. Since this is so, **no objective conception of the mental world can include it all.** But in that case it may be asked what the point is of looking for such a conception. The aim was to place perspective and their contents in a world seen from no particular point of view. It turns out that some aspects of those perspectives cannot be fully understood in terms of an objective concept of mind. But if some aspects of reality can’t be captured in an objective conception, why not forget the ambition of capturing as much of it as possible? The world just isn’t the world as it appears to one highly abstracted point of view that can be pursued by all rational beings. And if one can’t have complete objectivity, the goal of capturing as much of reality as one can in an objective net is pointless and unmotivated. I don’t think this follows. The pursuit of a conception of the world that doesn’t put us at the center is an expression of philosophical realism, all the more so if it does not assume that everything real can be reached by such a conception. **Reality is not just objective reality, and any objective conception of reality must include an acknowledgment of its own incompleteness.**

Our lack of knowledge about objective morals requires us to only consider subjective morals. These norms are unable to convey to the worth of others because of our epistemic constraint on knowledge.

**Second**, objective evaluations devolve into agent’s subjective beliefs since objective reasoning is finite. **Macintyre[[3]](#footnote-3)** summarizes the argument:

**An agent can only justify** a particular **judgment by referring to some universal rule from which it** may be logically **derive[s]**d, **and can only justify that rule** in turn by deriving it from some **[from a] more general rule.** or principle; but on this view **Since every chain of reasoning must be finite, such a process** of justificatory reasoning **must** always **terminate with the assertion of some rule.** or principle for which no further reason can be given. **Each individual** implicitly or explicitly has to **adopt[s]** his or her own **first principles on the basis of such a choice.** The utterance of **Any universal principle is** in the end **an expression of the preferences of an individual will** and for that will its principles have and can have only such authority as it chooses to confer upon them by adopting them**.**

Accordingly, all forms of reasoning devolve into agent’s own subjective conceptions of the situation.

**Third**, all things are only comprehensible within a particular perceptual framework. **Joyce[[4]](#footnote-4):**

This distinction between what is accepted from within an institution, and “stepping out” of that institution and appraising it from an exterior perspective, is close to Carnap’s distinction between internal and external questions. 15 Certain“**linguistic frameworks**” (as Carnap calls them) **bring** with them **new** terms and **ways of talking**: accepting the language of “things” licenses making assertions like “The shirt is in the cupboard”; **accepting math**ematics **[lets]** allows **one** to **say “There is a prime number** greater than one hundred**”;** accepting the language of propositions permits saying “Chicago is large is a true proposition,” etc. Internal to the framework in question, confirming or disconfirming the truth of these propositions is a trivial matter. But traditionally **philosophers have interest**ed themselves **in** the external question – **the** issue of the adequacy of **the framework itself:** “Do objects exist?”, “Does the world exist?”, “**Are there numbers?”,** “Are the propositions?”, etc. Carnap’s argument is that **the** external **question,** as it has been typically construed, **does not make sense. From a perspective that accepts mathematics, the answer** to the question “Do numbers exist?” **is just** trivially **“Yes.”** From a perspective which has not accepted mathematics, Carnap thinks, the only sensible way of construing the question is not as a theoretical question, but as a practical one: “Shall I accept the framework of mathematics?”, and this pragmatic question is to be answered by consideration of the efficiency, the fruitfulness, the usefulness,etc., of the adoption. But the (traditional) **philosopher’s questions** – “But is mathematics true?”, “Are there really numbers?” – **are pseudo-questions.** By turning traditional philosophical questions into practical questions of the form “Shall I adopt...?”, Carnap is offering a noncognitive analysis of metaphysics. Since I am claiming that we can critically inspect morality from an external perspective – that we can ask whether there are any non-institutional reasons accompanying moral injunctions – and that such questioning would not amount to a “Shall we adopt...?” query, Carnap’s position represents a threat. What arguments does Carnap offer to his conclusion? He starts with the example of the “thing language,” which involves reference to objects that exist in time and space. **To** step out of the thing language and **ask “**But **does the world exist?” is a mistake,** Carnap thinks, **because the very notion of “existence” is a term which** belongs to the thing language, and **can be understood only within that framework**, “hence this concept cannot be meaningfully applied to the system itself**.**” 16 Moving on to the external question “Do numbers exist?” Carnap cannot use the same argument – he cannot say that “existence” is internal to the number language and thus cannot be applied to the system as a whole. Instead he says that philosophers who ask the question do not mean material existence, but have no clear understanding of what other kind of existence might be involved, thus such questions have no cognitive content. It appears that this is the form of argument which he is willing to generalize to all further cases: persons who dispute whether propositions exist, whether properties exist, etc., do not know what they are arguing over, thus they are not arguing over the truth of a proposition, but over the practical value of their respective positions. Carnap adds that this is so because there is nothing that both parties would possibly count as evidence that would sway the debate one way or the other.

Thus, since a person’s only way to conceive of reality is un-verifiable, objective facts about morality are un-workable. Epistemology precludes since it forms the basis for all types of knowledge, include moral truths.

## Part 3 is (The infamous) *No Alt*.

The **neg** **burden** is to prove that there is a *competitive* alternative that is more effective for jurors to combat injustice in the criminal justice system, and the **aff** needs to prove that nullification is the most effective option. This can include jurors doing nothing, so I don’t preclude any topical neg ground. Unless they prove such, jury nullification is obligatory. **Five reasons**:

**First**, the resolution is a hypothetical imperative; it questions whether jury nullification ought to be used to achieve the end of responding to injustice. Instead of making a categorical moral statement like “Jury nullification ought be used,” which would be a categorical imperative, the resolution specifies it ought to be done “in the face” of injustice. **Jucker[[5]](#footnote-5)** clarifies**:**

**“In the face of”** which is mentioned briefly as a text-organizing phrase by Moon (1998: 217), thus **has its** metaphorical **origin in the confrontational connotations of face.**? **Such connotations are also present in other face-phrases, such as** in your face (`direct and often shocking') and **come face to face with** sth./sb. (`confront')**. The phrase** in (the) face of **usually refers to a confrontation** with an obstacle **of some sort, such as** opposition or **adversity,** **and is** therefore **clearly associated with** an element of **negative evaluation.** Stubbs (2007a: 166) argues that such evaluations are part of text-organization since "evaluating something focuses attention on it, contrasts it with something else, and emphasizes its importance in the text". As indicated above, in the face of sometimes occurs without the definite article (as is typical in the development of complex prepositions): in face of The share of short forms in the three corpora is as follows: BNC four percent (62/1461),8 COCA one percent 66/5300) and Time two percent (33/1900). Grammaticalization is often considered to be the result of conversational implicatures which have occurred frequently over time. While this could be the case for the frequent long form in the face of some other explanation needs to be sought for the infrequent short form in face of Hoffmann (2004: 193-195) has presented an interesting hypothesis, viz. that infrequent sequences may grammaticalize by analogy with sequences which have similar form and a similar function (in this case text-organizing). This is likely to be the case for in face of From a diachronic point of view, one would expect the shorter form to be a later development, replacing the earlier form.9 However, currently in face of appears to be a formal alternative that is possibly becoming obsolete: it occurs mainly in academic texts in the BNC and COCA, and the last attestation in Time is from the 1970s. **[While] the two main meanings of in (the) face of are sometimes hard to distinguish[,]**. **The more frequent one can be paraphrased as 'when confronted with'** (OED)**,** as in (16) and (17)**.** The less frequent **[Other] meaning[s]** can be paraphrased as 'despite', as exemplified in (18) and (19), the latter of which actually contains **[requires] an explicit despite-phrase.** (16) This can also happen when a doctor experiences discomfort in the face of death, or an inability to come to terms with his own helplessness. (BNC: ASK) (17) In.face of this opposition, the U. S. delegation, last week, quit Geneva, entrained for Paris en route for Washington, washed its hands of the con-ference. (Time, 1925/02/16) (18) We are maintaining our high promotional investment in the carpet sector and, in the face of strong competition. the third quarter has started satisfac-torily. (BNC: HRY) (19) the referendum had gone ahead in the face of claims by the federal authorities that it was unconstitutional, and despite threats of economic sanctions. (BNC: HL2)

Because a hypothetical imperative is definitionally a test of whether something meets a desired end, the sole question of whether or not to use the hypothetical imperative is whether nullification achieves the goal. Textuality precludes and frames the evaluation of standards since it forms the basis for the round’s content; the text inherently determines what is *supposed to be* talked about, and so all other standards must be compared to the guidelines for in-round discourse provided by the resolution. **At worst,** this means the resolution assumes the existence of some form of perceived injustice. Resolutional assumptions function as conditions on its evaluation, but since conditional logic dictates that if the antecedent is false the entire conditional is true, any other interp means we affirm.

**Second**, the act-omission distinction doesn’t exist. Every omission is also an action to omit – I choose not to take action, which is an action in and of itself. It is the ability to have self-control and formulate intentions that generates moral responsibility, not the arbitrary manners in which we physically do things. If I can say that jumping into a pond would let me save a drowning baby, it follows that not jumping into the water causes the baby to die, meaning my action caused the death. **And,** if a distinction doesn’t exist, responses to the burden are nonsensical; in the face of injustice, morality must prescribe some effective alternative in order to maintain its ability to individuals culpable if they choose not to act. **At worst,** an act-omission distinction would have to render any omission permissible **a)** otherwise, morality would lose normative force since it’s impossible for individuals to never omit, and **b)** there is no way to assign moral accountability to omissions since they’re attributable to a state of affairs and not any one actor. That means it is logically incoherent to place moral blame upon any particular actor for omitting.

**Third,** it’s impossible for me to compare nullification to unstable advocacy, since doing nothing is too vague of an advocacy. Ground is key since it dictates our ability to make arguments and win. Also, proving nullification generically bad is extra-topical because it makes “in the face of injustice” a meaningless specification in the resolution, letting the neg to garner offense from scenarios not under the umbrella of the topic. Limits are key to fairness since they dictate each debater’s advocacy.

**Fourth**, no ethical theory could deny the importance of desert, since if no one deserved anything, we couldn’t say that we deserve that others to treat us in whatever way a moral theory demands. For example, under Kantianism, we deserve that others treat us as rational agent. Thus desert is a side constraint, since all ethical theories are based on treating people in certain way, and therefore allocating rights based on what people deserve. Ignoring injustice is antithetical to desert – it’s nonsensical to unjust outcomes to occur and simultaneously will that others treat you justly.

**Fifth**, alternative burden structures allow the neg to either deny that nullification is moral or argue why another method is better to address injustice, whereas I have to defend against both, giving them more options to win. Reciprocity is key to fairness since it ensures we have equal access to the ballot. Also, ensures they can’t moot 6 minutes of AC offense every round by indicting whatever I spend less time justifying – whether we should address injustice, or why jury nullification is the way we should do it. This is unavoidable under their interp since I have to spend more time justifying one or the other in 6 minutes. Clash is key to education because it’s the only unique educational benefit of debating a topic.

## Part 4 is the *contention*.

Jurry nullification allows the jury to analyze court cases in context and confront cases that don’t have clear rule applications. **Murchison**: Melanie Murchisonan ABD, working on completing her thesis, in Law from Queen's University Belfast. ;“The Law, Morality and Social Discourse: Jury Nullification in a Canadian Context”; <file:///Users/Paul/Downloads/SSRN-id2277604.pdf>; 2013 PE

While Dworkin himself never discusses the process of jury nullification at length, he does mention its existence in his book Freedom’s Law in reference to the American Kevorkian cases, stating that “a jury, expressing the depths of public sympathy for patients dying in pain, refused to convict Kevorkian of violating the [special Michigan] statute, even though he admitted that he had” and that “patients only to go [Kevorkian] - and juries only acquit him – because there is no better alternative”188. This statement essentially promotes jury nullification in this circumstance, because Dworkin later states that “Making someone die in a way others approve, but he believes contradicts his own dignity is a serious, unjustified, unnecessary form of tyranny”189. Other scholars have discussed jury nullification using Dworkin’s theories using American case law and believe that Dworkin would absolutely support the process of jury nullification. For example, Darryl Brown states that Dworkin provides **a** stable **source of guidance for cases in which** seemingly **literal rule** application **would yield a result** widely **considered unjust** and this… **opens the door for** understandinghow **jury nullification** can occur **within** **the rule of law**; we might now describe such a verdict as principled, or lawful, nullification. **Juries**, like judges, **and like citizens** making decisionson everyday courses of action, **confront cases in** **which** seemingly literal or **clear rule applications are not appropriate** **because in the context of the case they conflict with other compelling** norms, **principles**, or values”190 . Brown goes further to say that nullification can identify statutes that are, in Dworkin’s words, “internally compromised”, because laws only "count as legal" when they "follow from the principles of personal and political morality the explicit decisions presuppose by way of justification”191. Arie M. Rubenstein draws on Brown’s work and states that as Dworkin says, laws unavoidably criminalize conduct that lawmakers did not intend to reach, and that **nullification is a positive way** to hold the lawmakers accountable192. In addition, Dworkin himself concludes that it is a prerequisite of the rule of law for ordinary citizens **to interpret criminal laws** and as such, nullification is always a possibility193. Rubenstein also states that role of the jury is to control legislative power, and that as such, “the jury trial should be structured in such a way as to support this antidespotic function; because a fact-finding jury cannot serve these ends, this structure requires the possibility of nullification”194. This means that **even just laws can be applied unjustly**, **and the function of the jury is to serve as a safety** valve **against unjust application of the law**. Thus, the jury is framed as a control not on legislative power, but on prosecutorial power. “Under this model, **jury nullification allows the system to maintain a**n **otherwise** reasonable **law while fulfilling justice concerns**. Some have suggested that the jury can act as a control on unjust applications of both legislative and executive power. Under this view, through nullification the jury signals the other branches as to the acceptability of their actions” It may appear to some that Judge Earl nullifies the law in Dworkin’s example, the “Elmer Case” as the majority decided that the law did not in fact require the statute of wills to be interpreted so that the son would receive the benefits, even though the statute clearly stated that the beneficiary of the will should receive the sum owed to them196.

1. Black’s Law Dictionary [↑](#footnote-ref-1)
2. Nagel, Thomas. The View from Nowhere. New York: Oxford UP, 1986. 25. Print. [↑](#footnote-ref-2)
3. Macintyre, Alasdair. *After Virtue*. Notre Dame: Notre Dame University Press, 1981. [↑](#footnote-ref-3)
4. Joyce, Richard. Myth of Morality. Port Chester, NY, USA: Cambridge University Press, 2002. p 45-47. [↑](#footnote-ref-4)
5. Corpora: Pragmatics and Discourse

Andreas H. Jucker, Daniel Schreier, Marianne Hundt

Google Books – page 181 [↑](#footnote-ref-5)