## AC

I affirm. I reserve the right to have every interpretation clarified with me in cross ex to promote in round norm setting and to have a deliberative discourse to determine the better conception of the good.

#### Qualified immunity is the objective evaluation of action with respect to constitutional law.

Jeffries ’10,

So what is ―qualified immunity‖? **Qualified immunity is the doctrine that precludes damages unless a defendant has violated ―clearly established‖ constitutional rights**.6 More fully, damages are barred if ―a reasonable officer could have believed‖ his or her actions to be lawful ―in light of clearly established law.‖7 This sounds simple enough, and there is every reason to suppose that the Supreme Court originally thought it so. Indeed, at one time, qualified immunity had two prongs: an objective requirement of reasonable grounds for believing one‘s conduct lawful and a subjective requirement of actual good-faith belief in the legality of that conduct.8 The subjective branch proved troublesome. Given the broad discovery standards in civil litigation, plaintiffs could rummage around in a defendant‘s background to find evidence suggestive of malice or bad faith. Accordingly, **the Supreme Court lopped off the subjective branch, leaving only the requirement of ―objective reasonableness** of an official‘s conduct, **as measured by reference to clearly established law**.‖ 9 Though conceptually amputated, the resulting doctrine was justified precisely on the ground that the pared-down focus on ―clearly established‖ rights could be easily administered, usually on pre-trial motion. SK

#### First, individuals give their life value by revolting against previously held conceptions of ideology. Death without revolt holds no value as it denies the existence of one’s own subjective truth.

Camus**,** [Albert, *The Rebel*, 1951, Part 1: “The Rebel”. SK]

That **revolt gives life** its **value**. Spread out over the whole length of a life, it restores its majesty to that life. To a man devoid of blinders, **there is no finer sight** **than** that of the **intelligence at grips with a reality that transcends it**. The sight of human pride is unequaled. No disparagement is of any use. That discipline that the mind imposes on itself, that will conjured up out of nothing, **that face-to-face struggle have something exceptional** about them. To impoverish that reality whose inhumanity constitutes man’s majesty is tantamount to impoverishing him himself. I understand then why the doctrines that explain everything to me also debilitate me at the same time. They **relieve[s] me of the weight of my own life**, and yet I must carry it alone. At this juncture, I cannot conceive that a skeptical metaphysics can be joined to an ethics of renunciation. Consciousness and revolt, these rejections are the contrary of renunciation. Everything that is indomitable and passionate in a human heart quickens them, on the contrary, with its own life. **It is essential to die unreconciled** and not of one’s own free will. Suicide is a repudiation. **The absurd man can only drain everything to the bitter end**, and deplete himself. The absurd is his extreme tension, which he maintains constantly by solitary effort, for he knows that in that consciousness and **in that** day-to-day **revolt he [or she] gives proof of his only truth, which is defiance**. This is a first consequence. SK

#### Individuals are able to change ideologies because, independent of a cohesive ethical theory, each individual develops their conception of a moral obligation based on their own subjective viewpoint.

Zelic, [Zelić, Tomislav. "Nietzsches Theorie des Multiperspektivismus Revisited." Synthesis philosophica 22.1 (2007): 231-244. SK]

In Beyond Good and Evil, Nietzsche further elaborates his theory of multiperspectivism already outlined in my reconstruction of the main argument in “On Truth and Lies in the Non-Moral Sense”. In a nutshell, the theory states that **any judgment or belief is an interpretation of the world from a particular and limited point of view**.13 With emphasis on passages in Nietzsche’s work, where he denies the existence of truth outright, some commentators like Danto, employing the traditional refutation directed at any skeptic, have argued that his claims undermine themselves self-referentially and are thus self-contradictory. The self-contradiction of the purported denial of all metaphysical truth becomes all the more problematic when Nietzsche turns around to present his own genuinely metaphysical theories such as the genealogy of master and slave morality, the ethos of honesty [Redlichkeit], the eternal recurrence of the same, the will to power, and so on. Here, his critics maintain, it is obvious that he does raise claims not only to logical validity but also metaphysical truth. Now, I would like argue that the refutation by means of demonstrating selfcontradictions misses the point. In my view, it simply does not apply to Ni- SYNTHESIS PHILOSOPHICA 43 (1/2007) pp. (231–244) T. Zelić, Nietzsche’s Theory of Multiper- 237 spectivism Revisited etzsche’s theory of multiperspectivism, if we restate it in such a way that it is consistent in reference to itself and thus immune against all attempts at demonstrating internal self-contradiction. To put it most succinctly, ‘**Every statement is perspectival’**. If we test it for self-referential coherence, we will immediately realize that this statement about all statements does not contradict itself. **It neither states a purportedly absolute truth nor does it raise any claims to validity**. It neither denies the existence of truth in general terms nor does it deny that specific statements to the contrary are not true. The crucial point of the statement is that **the truth of any statement is always already and time and again in question.** It may be true now. But **it may always turn out to be false from a different, more ‘objective’ point of view**. SK

**A.** Precludes – subjectivity is a prerequisite to ethical evaluation **B.** If subjectivism is true, you would affirm because limiting qualified immunity means that each individuals’ standard of right or wrong police action determines their guilt, not just the standard prescribed by the constitution as right or wrong. **C.** framework outweighs on topical specificity – the resolution is a discussion of subjective good versus constitutional good.

#### Thus, obligations made based on rules or standards can never be binding. Each individual would choose a different assertion in which to terminate which means that each individual’s preference determines their will.

Verheggen, [Verheggen, Claudine. "Wittgenstein's Rule‐Following Paradox and the Objectivity of Meaning." Philosophical Investigations 26.4 (2003): 285-310. SK]

2. **The paradox**, in Wittgenstein's words, **is that 'no course of action could be determined by a rule because every course of action can be made out to accord with the rule**.' (1958, #201) The notion of a rule Wittgenstein is dealing with here is, to be sure, paradoxical. For a rule according to which everything one does can be made out to accord with it is not a rule.AsWittgenstein continues to spell this out, 'if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here.' (I958, #20l) Where there is neither accord nor conflict, there is no rule-governed activity; in particular, there is no linguistic activity. For, if no application of a linguistic expresion is either correct or incorrect, then there is no such thing as meaning anything by any expression. Thus the paradox seems to have as a consequence that 'the entire idea of meaning vanishes into thin air', as Kriplte put it. (1982, p. 22) This truly devastating, indeed sellldefeating, conclusion can be avoided, however.All this takes is to recognize, as\X/ittgenstein imme- diately tells us, that the paradox is based on a misunderstanding, which is to think that there is no way of grasping a rule which is not an interpretation. He writes: It can be seen that there is a misunderstanding here from the mere fact that in the course of our argument we one interpreta- tion after another; as if each contented us at least for a moment, until we thoufitt of yet another one standing behind it. **What this shows is that there is a way of grasping a rule which is not an inter- pretation**. (I958, #201) Presumably, the suggestion here is not that grasping a rule never is an interpretation - after all, an expression is sometimes understood by being interpreted, i.e., by being explained in other, familiar words - but the suggestion is that not every expression could be under- stood in this way. Now **since**, according to Wittgenstein, **the paradox lies in the idea that every course of action can be made out to accord with the rule, the suggestion is that it stems from the idea that a rule can always be interpreted in such a way that every course of action can be made out to accord**, or to conflict, **with it**, as the case may be. And **so the paradox does seem to stem from the idea that grasping a rule always is an interpretation.** This part of the diagno- sis is not disputed by the commentators I am considering. But it is only the preliminary stage of \XI'ittgenstein's diagnosis. What must be investigated next, and what is controversial, is the reason why anyone would think that grasping a rule is always an interpretation in the Is: place. What conception of a rule would have to be in play? SK

**A.** Takes out constitutional justifications for qualified immunity as we cannot ascribe ourselves to laws that determine punishment. **B.** This means that absent the aff all interpretations and role of the ballots are infinitely meetable as a rule or obligation has no essence as a concept because subjective individuals can define the rule as whatever they want. **C.** Objective moral standards do not exist – all frameworks that assert universal moral ethical or principle based standards that apply in every instance thus cannot guide action.

#### Thus, statements that purport to guide action cannot defend that something is right or wrong, but rather express a way to view “the good” – the 1AC will defend that the standard would imply the resolution merely because the process of the 1AC is necessary to strive toward determining right and wrong.

Zelic 2, [Zelić, Tomislav. "Nietzsches Theorie des Multiperspektivismus Revisited." Synthesis philosophica 22.1 (2007): 231-244. SK]

Be that as it may. More importantly, whether or not Nietzsche denies the existence of metaphysical truth is entirely secondary to his **theory** of multiperspectivism. He **is primarily interested in overcoming the dogmas of conventional metaphysics, epistemology, and morality.** In order to understand the divorce of the theory of multiperspectivism from the theory of truth and its moral implications, we should elucidate Nietzsche’s concepts of life and the will to power as well as the dangers of the ascetic ideal in philosophy. For Nietzsche, life means that human beings adopt a finite and insecure point of view on their lives, since human life itself is finite and insecure. Furthermore, it sometimes requires painful changes of perspective and yet the purpose of life is and remains living life in order to enhance life. **It is simply a condition of human life that it constantly requires ever new interpretations and reinterpretations, radical adjustments, revisions, and corrections**. “Life itself is essentially appropriation, injury, overpowering of what is alien and weaker, suppression, hardness, imposition of one’s own forms, incorporation and at least, at its mildest, exploitation […].”14 Forgetting or ignoring this ‘truth’ would result in the slow disintegration and finally the absolute negation or total annihilation of life: premature death. The organic condition of life predetermines human beings materially, physiologically, and mentally. For their bodies to be proactively living bodies, “… it will have to be an incarnate will to power, it will strive to grow, spread, seize, become predominant – not from any morality or immorality but because it is living and because life simply is will to power”.15 Nietzsche anticipates and carefully preempts possible objections to this. Any physiologist or psychologist, he concedes, would have to face moral and methodological scruples before arriving at such ‘truths’ beyond good and evil, because of “the power of moral prejudices”, the “unconscious resistances in the heart of the investigator” and the “distress and aversion” caused by them.16 However, once we realize that all interpretations always include 10 F. Nietzsche, “On Truth and Lies in the NonMoral Sense”, p. 148. 11 F. Nietzsche, Beyond Good and Evil, interim. 12 F. Nietzsche, “On Truth and Lies in the NonMoral Sense”, p. 143. 13 F. Nietzsche, Beyond Good Evil, §§ 2, 9, 14, and 34. See also Friedrich Nietzsche, The Will to Power, §§ 481, 657, 602, and 616. 14 F. Nietzsche, Beyond Good Evil, § 259. 15 Ibid. 16 Ibid., § 23. SYNTHESIS PHILOSOPHICA 43 (1/2007) pp. (231–244) T. Zelić, Nietzsche’s Theory of Multiper- 238 spectivism Revisited “tyrannically inconsiderate and relentless enforcement of claims of power” and the “unexceptional and unconditional aspects of all ‘will to power’”,17 **we will have overcome** not only our scruple but also **dogmatic morality itself**. From a strictly physiological and psychological point of view, Nietzsche determines the essential principle of organic existence to be the will to power. The fundamental purpose of life is the proactive and joyful affirmation and enhancement of life; life as an end in itself. “A living thing seeks above all to discharge its strength – life itself is will to power; self-preservation is only one of the indirect and most frequent result.”18 The “instinct of self-preservation [Selbsterhaltungstrieb]” is a one of the “superfluous teleological principles”.19 On the one hand, both the instinct of self-preservation and the will to truth or “the drive to knowledge [Trieb zur Erkenntnis]”20 are merely secondary instruments or means of the will to power. On the other hand, the will to untruth and deception might serve the will to power better than the will to truth and truthfulness in many particular cases.21 In several places, Nietzsche warns us against philosophical martyrdom, i.e., “the suffering for the sake of truth”.22 The problem with “the general renunciation of interpretation”, “the faith in truth”,23 and “the will to truth, to ‘truth at any price’”,24 is the ascetic ideal: the devaluation of the natural world and the denial of life and more specifically “the impoverishment of life” and “the self-belittlement of man”.25 **Multiperspectivism is fairly and simply “a basic condition of life**”.26 An individual freely chooses a cognitive point of view, which is most advantageous to his life, will to power, and specific interests in life-enhancement. But that does not mean that the individual abides by the chosen perspective obdurately or rigidly. **There are indefinitely many points of view to choose from on a single object or issue**. Why would one prefer a single ‘immediate certainty’ if there are inexhaustibly many possibilities? **The philosopher, as Nietzsche envisions him, needs to be inquisitive to the point of “cruelty”27 and he has a “duty to suspicion”,28 first and foremost regarding his own prejudices and thought process. In fact, he “will look for error precisely where the instinct of life most unconditionally posits truth”.29** According to Nietzsche, he **should be ready for any revaluation of values or change of perspectiv**e, which might be called for in any given situation. The theory of multiperspectivism enables the philosopher to see any given thing or issue from ever new and different points of view. For Nietzsche, that is precisely “the discipline and preparation of the intellect for its future ‘objectivity’”.30 Nietzsche understands the philosopher’s ‘objectivity’ in a very unconventional way. For him, it is the ability to weigh arguments against counter-arguments, master each of them separately, and change from one to the other flexibly. This **training will help the philosopher to “employ a variety of perspectives and affective interpretations in the service of knowledge** [Erkenntnis]”.31 **Since all knowledge is perspectival, the more points of view we are able to adopt to understand any given thing or issue, “the more complete will our ‘concept’ of this thing, our ‘objectivity’, be”.**32 Once again, **the notion of the ‘correct point of view’ is nonsensical. For us to be able to determine the more correct of two given points of view would require us to take a third point of view, from which we would have to claim that it alone grants the exclusive access to the thing-initself.** However, the third point of view could always be outperformed by a forth more ‘objective’ point of view and so on ad infinitum. Likewise, the question as to whether human existence without perspectival cognition would destroy the very interpretability of human existence and its SYNTHESIS PHILOSOPHICA 43 (1/2007) pp. (231–244) T. Zelić, Nietzsche’s Theory of Multiper- 239 spectivism Revisited possession of any possible meaning or whether human existence necessarily always implies proactive engagement in perspectival interpretation, “cannot be decided even by the most industrious and scrupulously conscientious analysis and self-examination of the intellect”.33. SK

Impacts: **A.** We only defend that the resolution would be preferable in a system where we care about determining right and wrong, so de-justifying the dominance of moral systems does not deny or criticize an assumption of the affirmative, but proves why the 1AC is necessary. **B.** the 1AC method controls the internal link for metaphysical questions such as identity because those are dogmas that limit our subjective appropriation of the good **C.** to negate means “to deny”, so the negative must disprove that the affirmative *leads to communication*, so proposing a counter-policy wouldn’t negate under the framework because it does not disprove the subjective attitude of approval the 1AC has towards the resolution. **D.** the res only means that a state of affairs where the resolution happens is preferable because it facilitates determining action – the question of “who” takes the action does not matter because subjectivity is inevitable – the action itself is what matters. **E.** Moral “truths” cannot exist but we have constitutive obligations as living actors to determine more conceptions of the “good” which is why we should affirm.

#### This radical and constant alterations of perspectives occurs through creativity. This bridges the gap between “objective” morality and subjectivism. Creativity arises through spontaneous action in reaction to shifts in circumstances caused by natural forces. The 1AC is inherently creative as it is a shift from the status quo so vote aff – otherwise we would keep ourselves tied down to previously held conceptions of reality.

Connolly 13 writes[[1]](#footnote-1)

As individual and collective agents of multiple types, **we exercise one dimension of freedom when we pursue existing desires and another when we reflexively reconsider them** and seek outlets to act upon revised desires. But those desires are not merely given in the first instance, and the reflexive process in the second does not always render explicit what was already “implicit” in operative assumptions and desires. There is often more pluripotentiality in the rush of desire forward to consolidation in action than is captured by the lazy idea of the implicit. There is also pluripotentiality during those fecund moments when an entire constituency coalesces under new circumstances, with the change in “circumstances” often shaped by rapid shifts in nonhuman force fields with which they are involved. In such circumstances the creative element of freedom comes into play. To put the point briefly, **neither the tradition of negative freedom nor that of positive freedom comes to terms sufficiently with the role of creativity in freedom**. **Creativity** here **means**, as a first cut, **action by the present upon ambiguities arising from the past oriented toward the future in a way that is not entirely reducible to the past as either implicit in the present or an aggregation of blind causes that produce the future**. It might involve an exploratory movement back and forth between different parties in a cloudy situation that issues in a new result none intended at the start. These initiatives may then be consolidated by disciplinary processes and tactics that help to sediment them into the soft tissues of cultural life. Reflexivity, you might say, begins to do its work after the uncanny, creative element in freedom has begun to unfold, for good or ill. Creative processes flow through and over us, and reflexivity doubles the creative adventure. **Actions are thus not entirely controlled by pre-existing intentions**; rather **the creative dimension helps to compose and refine intentions as they become consolidated in action.** To articulate the creative dimension of freedom, then, is to insert a fundamental qualification or hesitation into the ideas of both the masterful agent and agency as the activation of intentions already there. The creative element is located somewhere between active and passive agency. When creative freedom is underway in an unsettled context we may find ourselves allowing or encouraging a new thought, desire, or strategy to crystallize out of the confusion and nest of proto-thoughts that precede it. An agent, individual or collective, can help to open the portals of creativity, but it cannot will that which is creative to come into being by intending the result before it arrives. Real creativity is thus tinged with uncertainty and mystery. The creative dimension of freedom discloses an ambiguity that haunts extant ideas of intention, desire, agency, and reflexivity. It exposes the ambiguity of agency in the practice of freedom. This ambiguity may find expression, say, in a basketball game as an accomplished player under intense defensive pressure spontaneously fires up the first jump shot ever attempted amid the flow of action. The shot, initially lacking a name, surprises the shooter and mystifies defenders. It was not implicit in the athlete’s repertoire; it emerged in the pressure of action. After being repeated, named, and perfected through relentless training, it may spread like wildfire across the basketball landscape, as that type of shot did in the 1950s in the United States. Everything else in the game now shifts to some degree too. Other players, coaches, and referees now adopt creative responses to it, generating changes in the game through a mélange of partisan mutual adjustments that no individual or organization intended at the outset. Or take a young point guard who spontaneously completes a fast break with a blind, behind-the-back pass and then finds himself negotiating with his coach to decide just when such passes can be allowed in the future. Such modes of creative, mutual adjustment, neither simply assignable to one player or coach, nor fitting neatly into extant notions of preformed intention, nor reducible to a reflexive dialectic, occur all the time in multiple domains. They form[s] part of the essence of freedom. Spontaneous creativity is accompanied by an element of real uncer- tainty; it occurs in that liminal moment when the limits of an activity have been experienced and before a definitive response to that limit has emerged. It thus occupies a fecund zone of indiscernibility. The result can be checked after the fact to see whether the results are positive or negative. A behind-the-back shot, for instance, might arise spontaneously in the ï¬‚ow of a game, startling the defense the first time it is enacted. It is apt, how- ever, to turn out to be too hard to perfect and too easy to defend once other teams adjust to the initial surprise. The example of the first jump shot. however, does not adequately take into account how the very context of action may sometimes change through an even more rapid shift in circumstances. To fill that bill you would need to have a setting in which a significant shift in the rules governing the game had been made, or, better, the players now find themselves in a new situa- tion in which the opponent has a roster with only seven-foot players. Cre- ative freedom, then, is spontaneous activity within a shifting setting with constraints in which an element of real uncertainty circulates through the setting. The spontaneity now ï¬‚ows through the agents and the open-ended rules of the practice, for good or ill. It operates within limits, even though those limits cannot all be stated in advance. It is unlikely. for instance. that a point guard will spontaneously ï¬‚ap his arms to ï¬‚y from the backcourt to the basket in order to dunk the ball, no matter how intense the defense is. Human arms lack the needed preadaptations to negotiate such a maneuver, even though a few players do start a dunk at the free-throw line. If **creativity finds expression in** the human estate, it will sometimes do so at surprising moments during a disruption in a practice, opening the door to a scientific invention, a new concept, a political initiative, **a new social movement**, an artistic innovation, market spontaneity, a language change, a cooking invention, teaching improvisation, a new type of film scene, a musical production, the use of new media, or the invention of a new product. And so on endlessly. **Our identification with life** – our tacit sense of belonging to a human predicament worthy of embrace – is partly rooted in reflexive reconsideration of established desires and ends. But it **is grounded** too **in** those uncanny experiences of **creativity by means of which something new enters the world**. This may be one of the reasons people cleave to the sweetness of life. It **[creativity] ties the sweetness of life to a vitality of being**, even more than to a preordained end, purpose, or “fullness” with which it is officially invested. **The intimate relation between freedom and creativity is why freedom is never sufficiently grasped by the idea of a lack to be fulfilled**, successful action upon preset desires, or the drive to render the implicit explicit. The experience of uncertainty or incompleteness is sometimes an occasion of fecundity.

#### The aggregation of individual creative perspectives and the way to enhance this perpetual realization takes form only through some form of communication which serves to work out a shared understanding – otherwise we would only have subjective morality based on individual perceptions.

Habermas, [The inclusion of the Other. Studies in Political Theory. Jürgen Habermas. [MIT Press](http://mitpress.mit.edu/), 1998, parts VIII and IX of Chapter 1]

I proceed on the assumption that the **participants** do not **wish to resolve** their **conflicts through** violence, or even compromise, but through **communication**. Thus their initial impulse is to **[They] engage in deliberation** and **[to] work out a shared *ethical*self-understanding** on a secular basis. But given the differentiated forms of life characteristic of pluralistic societies, such an effort is doomed to failure. The participants will soon realize that **the critical appropriation of their strong evaluations leads to competing conceptions of the good.** Let us assume that they nevertheless remain resolved to engage in deliberation and not to fall back on a mere *modus vivendi* as a substitute for the threatened moral way of life. **In the absence of** a **substantive agreement** on particular norms, **the participants must** now rely on the “neutral” fact that each of them **participate**s **in *some*communicative form of life** which is structured by linguistically mediated understanding. Since **communicative processes** and forms of life have certain structural features in common, they could ask themselves whether these features **harbor normative contents that** could **provide a basis for shared orientations**. Taking this as a clue, theories in the tradition of Hegel, Humboldt, and G. H. Mead have shown that **communicative actions** involve shared presuppositions and that communicative forms of life **are interwoven with relations of reciprocal recognition**, and to this extent, both **[and] have a normative content**. These analyses demonstrate that **morality derives** a genuine **meaning**, independent of the various conceptions of the good, **from** the form and perspectival structure of unimpaired, intersubjective **socialization.**

Prefer additionally:

**A.** Moral norms do not exist so our temporal conception of “good action” must arise from the communication between individuals but we cannot prescribe any actions besides those that promote communication **B.** AC framework precludes because all others presume the validity of communication. **C.** Argumentation itself presumes the necessity of communication which means that my framework is probably the best method to solve any kritik as critique can only happen through deliberation. **D.** it is a performative contradiction to deny the framework because you use communicative deliberation to do that in the first place. **E.** The 1AC is not concerned with the end result but the process of actions – if the action inherently rejects a stunting of communication that would be sufficient to affirm. **F.** Emphasizing communication of perspectives is key to make excluded perspectives feel as if they are included. The affirmative is concerned with what you do with perspectives which is to communicate them so the mere act of stopping exclusion of perspectives would not turn the 1AC.

Habermas 2,

This is easy to understand in an intuitive way (though any attempt to provide a formal justification would require involved discussions of the meaning and feasibility of “transcendental arguments”). Here I will limit myself to the observation that **we engage in argumentation with the intention of convincing one another of the validity claims** that proponents raise for their statements and are ready to defend against opponents. The practice of **argumentation sets in motion a**cooperative**competition for the better argument**, where the orientation to the goal of a communicatively reached agreement unites the participants from the outset. The assumption that the competition can lead to “rationally acceptable,” hence “convincing,” results is based on the rational force of arguments. Of course, what counts as a good or a bad argument can itself become a topic for discussion. Thus **the rational acceptability of a statement ultimately rests on reasons in conjunction with specific features of the process of argumentation itself.** The four most important features are: **(i)** that nobody who could make a relevant contribution may be excluded; **(ii)** that all participants are granted an equal opportunity to make contributions; **(iii)** that the participants must mean what they say; and **(iv)** that communication must be freed from external and internal coercion so that the “yes” or “no” stances that participants adopt on criticizable validity claims are motivated solely by the rational force of the better reasons. If everyone who engages in argumentation must make at least these pragmatic presuppositions, then in virtue of (i) the public character of practical discourses and the inclusion of all concerned and (ii) the equal communicative rights of all participants, only reasons that give equal weight to the interests and evaluative orientations of everybody can influence the outcome of practical discourses; and because of the absence of (iii) deception and (iv) coercion, nothing but reasons can tip the balance in favor of the acceptance of a controversial norm. Finally, on the assumption that participants reciprocally impute an orientation to communicative agreement to one another, this “uncoerced” acceptance can only occur “jointly” or collectively. Against the frequently raised objection that this justification is circular I would note that **the content of the universal presuppositions of argumentation is by no means “normative” in the moral sense.** For inclusivity only signifies that access to discourse is unrestricted; it does not imply the universality of binding norms of action. The equal distribution of **communicative freedoms** and the requirement of truthfulness in discourse **have the status of** argumentative**duties** and rights, not of moralduties and rights. So too, the absence of coercion refers to the process of argumentation itself, not to interpersonal relations outsideof this practice. These constitutive rules of the language game of argumentation govern the exchange of arguments and of “yes” or “no” responses; they have the epistemic force of enabling conditions for the justification of statements but do not have any immediatepractical effects in motivating actions and interactions outside of discourse. The point of such a justification of the moral point of view is that **the normative content of** this **epistemic language** game **is transmitted only by** a rule of argumentation to the selection of norms of action, which together with their moral validity claim provide the input into practical **discourses**. A moral obligation cannot follow from the so to speak transcendental constraint of unavoidable presuppositions of argumentation alone; rather it attaches to the specific objects of practical discourse, namely, to the norms introducedinto discourse to which the reasons mobilized in deliberation refer. I emphasize this when I specify that (U) can be rendered plausible in connection with a(weak, hence nonprejudicial) concept of normative justification.

#### [Burden] Thus, under the framework, the affirmative must prove that limiting qualified immunity allows us to determine conceptions of truth. The negative counter-perspective would prove that qualified immunity allows us to determine conceptions of truth better.

#### [CQ] Thus, the central question of the resolution considers qualified immunity in relation to static norms and individuals’ subjective consideration of those norms

#### The thesis of the 1AC is that limiting qualified immunity protects communicative deliberation.

**First,** Qualified immunity rejects communication in the judicial space as prosecutors cannot prosecute a police officer and discuss the merits of officer action. This is a necessary form of communication as it allows us to discuss what is “right” or “wrong” police officer action, a necessary moral standard for evaluating police officer action.

Hassel, [Diana Hassel, Living a Lie: The Cost of Qualified Immunity, 64 Mo. L. Rev. (1999) Available at: <http://scholarship.law.missouri.edu/mlr/vol64/iss1/9>. SK]

In Part IV, I explore both the usefulness of a doctrine such as **qualified immunity** that **allows substantive choices to be made silently** and the costs inherent in such a doctrine. While the **qualified immunity defense arguably encourages quiescence by letting steam out of what might otherwise be a divisive area of public debate**, **we pay a high cost for its sedative effect**. The defense encourages us to pretend that we have an even-handed way to address a wide range of civil rights violations. In fact, we do not. That no such system for redress is in place is, in perhaps some unarticulated way, known to the participants and onlookers in the civil rights drama. However, **qualified immunity makes it possible to avoid the necessity of directly facing the question of which kinds of constitutional wrong**s, if any, **should be redressed** by damage award:

Outweighs:

**A.** Precludes a discussion of officer efficiency as we can only determine what is “efficient” if we have a conception of right or wrong police action. **B.** Scope – in the context of the executive and judicial branch, we need checks on officer action that determine whether that action is good or bad based on each specific situation. **C.** Guts neg offense – if an officer violates the constitution they are not an officer anymore so the only discussion that would happen is if they are not a police officer which falls outside of the topical limits of the resolution. **D.** Cyclicality – masks violence otherwise because there is never a discussion of officer action unless if it violates the constitution.

#### Second, ascribing ourselves to the law such as the constitution through qualified immunity is a way of forcibly aligning ourselves with rules or norms which are never binding. The 1AC is a method of seizing back rules by inserting our own opinions into the space of judgement.

**Foucault,**

**“Emergence is thus the entry of forces;** it is their eruption, the leap from the wings to center stage, each in its youthful strength. What Nietzsche calls the Entstehungsherd of **[T]he concept of goodness is not specifically the energy of the strong or** the reaction of the **weak, but** precisely **this scene where they are** displayed superimposed or **face-to-face.** It is nothing but the space that divides them, the void through which they exchange their threatening gestures and speeches. As descent qualifies the strength or weakness of an instinct and its inscription on a body, **emergence designates a place of confrontation,** but not as a closed field offering the spectacle of a struggle amount equals. Rather, as Nietzsche demonstrates in his analysis of good and evil, it is **a “non-place,”** a pure distance, which indicates that the adversaries do not belong to a common space. Consequently, no one is responsible for an emergence; no one can glory in it, since it always occurs in the interstice. In a sense, **only a single drama is ever staged in this “non-place” the endlessly repeated play of dominations.** **The domination** of certain men over others **leads to the differentiation of values;** class domination generates the idea of liberty; **and the forceful appropriation of things** necessary to survival and the imposition of a duration not intrinsic to them account for the origin of logic. **The relationship of domination is** no more a “relationship” than the place where it occurs is a place; and, precisely for this reason, it is **fixed, throughout** its **history**, in rituals, in meticulous procedures that impose rights and obligations. It establishes marks of its power and engraves memories on things and even within bodies. **It** makes itself accountable for debts and **gives rise to the universe of rules, which is by no means designed to temper violence, but rather satisfy it.** Following traditional beliefs, it would be false to think that total war exhausts itself in its own contradictions and ends by renouncing violence and submitting to civil laws. On the contrary, **the law is calculated** and relentless pleasure; delight in the promised blood, **which permits the perpetual instigation of new dominations and** the staging of meticulously **repeated scenes of violence. The desire for peace,** the serenity of compromise, **and the** tacit **acceptance of the law,** far from representing a major moral conversion of a utilitarian calculation that gave rise the law, **are but its result and**, in point of fact, **its perversion**: “guilt, conscience, and duty had their threshold of emergence in the right to secure obligations; and their inception, like that of any major event on earth, was saturated in blood.” Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; **humanity installs each of its violence in a system of rules and** thus **proceeds from domination to domination.** The nature of these rules allows violence to be inflicted on violence and the resurgence of new forces that are sufficiently strong to domination those in power. **Rules are empty in themselves, violence and un-finalized; they** are impersonal and **can be bent to any purpose. The successes of history belongs to those** who are **capable of seizing** these **rules, to replaces those who had used them**, to disguise themselves so as to pervert them, **invert their meaning**, and redirect them against those who had initially imposed them; **controlling this complex mechanism, they will make it function so as to overcome the rulers through their own rules.** The isolation of different points of emergence does not conform to the successive configurations of an identical meaning; rather, they result from substitutions, displacements, disguised conquests, and systematic reversals. If interpretation were the slow exposure of the meaning hidden in an origin, then only metaphysics could interpret the development of humanity. But if **interpretation is the violent** or surreptitious **appropriation of a system of rules, which** in itself **has no essential meaning**, in order to impose a direction, to bend it to a new will, to force its participation in a different game, and to subject it to secondary rules, then the development of humanity is a series of interpretations. The role of genealogy is to record its history: the history of morals, ideals, and metaphysical concepts, the history of the concept of liberty or of the ascetic life; as they stand for the emergence of different interpretations, they must be made to appear as events on the stage of historical process**.”**

#### Third, Qualified immunity is inherently a masking tool which stunts debate and discussion and precludes strategies for change – it means the 1AC is always the first step. It denies deliberation which hampers the *possibility for consensus* because people are not given a voice in the first place.

Hassel, [Diana Hassel, Living a Lie: The Cost of Qualified Immunity, 64 Mo. L. Rev. (1999) Available at: <http://scholarship.law.missouri.edu/mlr/vol64/iss1/9>. SK]

Current **qualified immunity doctrine serves as a means to diffuse conflict**. **Without a clear rule** that some kinds of civil rights harms will not be redressed, **there is minimal pressure for change**. **This "hiding of the ball'' quality of qualified immunity is why, in spite of many expressions of dissatisfaction with the system, there had been little effective rallying for change.** The reason the discontent of the participants in this system has not led to a significant change is that **the terms of the debate are defined by the immunity system** rather than by the fundamental question of the extent of rights and liabilities in civil rights actions. **The civil rights remedial scheme organized around qualified immunity thus has an inherently self-preserving or stabilizing quality**. It allows for tinkering at the margins, but fundamental recasting of the terms of the debate is unlikely. My assertion that **qualified immunity has a camouflaging effect** on civil rights law is supported by a large body of scholarship that explores legal regimes that define reality in a way that limits the ability of the participants in the system to change it.'" These scholars argue that when a legal system is accepted as being the only available way to organize an activity and thus seems inevitable, **the legal system encourages acceptance of the status quo**."' The insights gained by scholars working in this area are helpful to apply to the qualified immunity standard in order to explore its hold on the civil rights imagination. This analysis maps out the way **a doctrine such as qualified immunity can develop into an obstacle to the very aims it professes to accomplish. Particularly apposite** to an analysis of civil rights law **is the work** that has been done **on** the change-inhibiting impact of the development of **antidiscrimination law**.'" In commenting on the effect of the adoption of equal rights rhetoric on the struggle to end racial inequality, Kimberle **Crenshaw** has **concluded that** "[s]**ociety's adoption of the ambivalent rhetoric of equal opportunity law ha[s] made it that much more difficult for Black people to name their' reality**. While equal employment opportunity law has been adopted, the material reality of most Black people has not improved.""Â° In fact, improvement may be hindered by the existence of the equal opportunity law since **it may undermine the political consensus necessary for change**." ' Another commentator has suggested that "the language of rights undermines efforts to change things by absorbing real demands, experiences, and concerns into a vacuous and indeterminate discourse. The discourse abstracts real experience and clouds the ability of those who invoke rights rhetoric to think concretely about real confrontations and real circumstances."'" The existence of antidiscrimination law can thus create the appearance of improvements in racial equality while at the same time not encouraging fundamental change.'" The focus on the intent of the actor in equal protection claims rather than the impact on the person experiencing the discrimination has also been criticized as an inhibitor to the elimination of racial inequality." By paying exclusive attention to the blarneworthiness of the defendant, an examination of the impact of the challenged practice on those complaining about it is lost. Fairness to the defendant, rather than eliminating discriminatory efiect, is the central concern. These commentators suggest that the economic and social reality of race inequality is obscured by the existence of antidiscrimination law and by the success of a small exceptional group. As Derrick Bell has stated, "Discrimination claims when they are dramatic enough and do not threaten majority concerns, are given a sympathetic hearing, but there is a pervasive sense that definite limits have been set on the weight that minority claims receive when balanced against majority interests."'" While it is unclear what the alternative to antidiscrimination law is, these critiques strongly argue that antidiscrimination law does not do what it suggests it will do and may, in fact, make a better system more difficult to imagine and thus to create. This current critique of antidiscrrnination law can be used to understand how the qualified immunity standard affects the system of compensation for constitutional wrongs. One major similarity is the way in which the existence of Section 1983 siphons off pressure to create some other system of redress. The open-ended language of the Section 1983 statute seems to promise a powerfirl remedy against governmental abuse. As we have seen, qualified immunity severely limits that remedy, but on a case-by-case basis. There is no general prohibition against certain types of civil rights claims, only the seemingly individualized application of the qualified immunity defense. The fact that some types of claims are destined to fail because of the type of claim they are, not because of the particularized behavior of the defendant, is hidden. Adding to the illusion of a generally available remedy is the spectacular succws of a few high profile cases. A few large recoveries in cases that present particularly compelling facts obscure the reality of the fruitlessness of most claims."' On the other side of the lawsuit, qualified immunity promises much more to the defendant than it delivers. The defense is supposed to protect govemment actors not only from liability but also from entanglement with litigation. The promise is often not kept because the qualified immunity defense presents a combination of fact and law questions that cannot be quickly disposed of prior to trial. However, the theoretical protection offered by the defense and the low incidence of actual judgments against government actors lulls government employees into acquiescence to the system. The emphasis that qualified immunity places on the reasonableness of the defcndant's actions rather than on whether a constitutional right was violated is another way in which qualified immunity distorts civil rights law. **Qualified immunity makes the essential issue of a civil rights claim the question of whether it would be too much of an inhibitor of government action to require a particular defendant to pay damages** to the plaintiff. The focus is not, at least initially, on whether the plaintiffs constitutional rights were violated. This emphasis also makes it difficult to discern and consider which rights are or should be protected and which we are content not to protect with monetary compensation. **Qualified immunity**'s harm is that it **makes it difficult to see the policy choices made by courts** in civil rights actions. **Cloaking these policy choices in the qualified immunity doctrine** avoids the possibility of an open debate **concerning which civil rights should be protected and how**. SK

Impacts: **A.** we preclude a discussion of whether qualified immunity is good or bad because in the status quo the debate is cloaked – that’s inherency – and we need to repeal it to break free of all of the camouflage of law surrounding the issue **B.** The 1AC’s philosophical question precludes policymaking because we cannot evaluate policies as they are cloaked within ideology **C.** Political consensus is the necessary first step to address issues of structural violence.

### UV - Theory

**First**, presume aff

A. Overcoming (a) 7463 rebuttal and double extension time skew (b) structural neg side bias (c) neg strat flexibility (d) disclosure rules (e) neg layering (f) neg’s ability to contest aff arguments more times means that I did the better debating or chose the better strategy if the round comes to a standstill and there is no offense left in the round.

And, if skep doesn’t affirm then it triggers presumption so it doesn’t negate under a truth testing model

A. Reciprocity: otherwise skep becomes a nib against the aff as I have to prove why the aff fw solves the problem and win offense to truth testing whereas the neg can do either

B. Ground – skews aff ground as all of my offense gets mooted – aff ground is key and outweighs - aff has to defend something in the topic whereas neg has the ability to read anything.

**Two,** If the affirmative defends one unconditional advocacy, the neg must only defend a single unconditional advocacy on one layer, as otherwise it would be skewing my time in the round, as they can just spread out the aff in the 1N, which is structurally unfair. To clarify, an advocacy can be a theoretical interpretation, a critical alternative, a counterplan or disad uniqueness that defends a policy passing.

**Three,** Aff must get all theoretical ground because of reciprocity – the aff does not have prefiat k ground while the neg does – if you give neg theory as well the skew will be 2-1 on the prefiat layer because I only have theoretical ground in the 1AC – otherwise you’d read T meaning no T against the aff as its irreciprocal. To clarify, the negative many not get offense on theory or read counter standards, and I cannot get offense on kritiks so its reciprocal. The negative can read a K on any interp in the aff which solves back any abuse. Reciprocity key because it controls equal access to the ballot.

No RVIs on aff interps in the 1AC but I will grant an RVI on 1AR theory – they know what we believe to be a legitimate strategy so winning a counterinterp shouldn’t justify a win for them – they should be able to adapt the 1NC to the 1AC. Drop the argument on 1AC interps doesn’t make sense because they should have just not read them if they violate – means they knowingly perpetuate abuse. Any theory that moots arguments already made however can justify an RVI for both the affirmative and negative.

### UV – Substance

**First,** contradictions are a voting issue:

**A.** contradictions allow aff defense and turns on a position to turn into a net benefit on the contradictory position destroying competitive equity which is key to test truth of the resolution

**B.** perf con destroys the legitimacy of the advocate so they didn’t do the better debating

**C.** key to political action as it ensures validity of advocacy.

**D.** preserves constitutive purpose of LD debaters –

IDEA,

The cornerstone of **Lincoln-Douglas** Debate is the productive dialogue between two differing moral interpretations of an important issue. Each debater should present a case in which the resolution is interpreted fairly, and the complexities of an issue are acknowledged through the acceptance of some harms and risks. A good debater should be able to argue against unfair definitions of terms, or the imbalanced assignment of burdens. More specifically, **debaters should present a persuasive moral position that they can defend from criticism and use to argue against an opposing case,** without falling into self-contradiction or denying the complexity of the issues at stake. SK

**Second,** the role of the judge is to vote for the debater who better proves the truth or falsity of the resolution as a general principle.

**A.** Less arbitrary – allows us to weigh offense and defense under the paradigm of the resolution

**B.** Inclusion – we allow for all impacts as you can read your role of the ballot as a framework which arbitrates what truth or falsity of the resolution means

**C. [look at other files]**

**D.** Preserves NSDA judge obligation.

NSDA,

**A decision SHOULD BE based upon the consideration of** any or all of the following questions: 1. **Burden of proof** ‐ **Which debater has proven his/her side of the resolution more valid as a general principle by the end of the round?** **No debater can realistically be expected to prove complete validity** **or invalidity** of the resolution. A judge should prefer quality and depth of argumentation to mere quantity of argumentation. **A judge should base the decision on which debater more effectively resolved the central questions of the resolution rather than on insignificant dropped arguments**. SK

This judge obligation comes prior to other arguments that don’t link directly to the role of the ballot because it delineates which arguments are sufficient to constitute a voting issue – other arguments might be good but the judge does not have the jurisdiction to vote on them.

**Third,** use

## Extensions

### XT – UV 1

Perf con apriori extension

1. Conceded D point under Habermas that denying the framework is a performative contradiction as you use communication to do that in the first place
2. Conceded first underview that contradictions are an independent voting issue
3. No new responses – these arguments were conceded out of the AC

Contradictory Condo bad – new off.

A. interpretation: Debaters

#### This is a principle not a rule

IDEA,

These are the only rules for Lincoln-Douglas Debate. Judges are not permitted to impose additional rules on debaters. Because these rules focus on the goals and procedures of debate, they do not include all that, from a strategic perspective, might be considered principles of effective debate. Although principles are important to persuasive Lincoln-Douglas debating, they should not be enforced as rules.

### XT – UV 2

* Comes before theory
* Comes before Spec T – general principle
  + Reading reasons as to why T comes prior does not respond because you could have read T as a reason to drop the argument which is a litmus test for which arguments are good rather than reading it as drop the debater which makes it a voting issue.
* Read it as a reason to drop the arg but it cannot be a voting issue.

### CX

Justify that racism is good?

No b/c we say that racism is bad because it stunts communicative processes. We cannot have binding moral actions that define what is “good”. We say the resolution is within our constitiutive purpose to find more ways of knowing and being.

Overview:

Traditional philosophy is false. We can never have “good” or “bad” action or “truth” or ‘falisity”, but the human condition makes it such that we strive toward these conceptions. We accept the nihilism (at black nihilism) but conclude that our best way to move forward is to find different competing cocneptions of the good. Thus, we affirm not because it is “good” but rather because our constitutive purpose is to determine different ways of knowing or being through communication of norms, and the resolution promotes this discussion. Thus, the resolution is not “good” but a necessary step in the ongoing process of life.

Process of communication is what matters

There can never

Saying something is better for communication doesn’t negate that the affirmative *is* good for communication

## 1AC 2 (?)

I affirm. I reserve the right to have every interpretation clarified with me in cross ex to promote in round norm setting and to have a deliberative discourse to determine the better conception of the good.

#### Qualified immunity is the objective evaluation of action with respect to constitutional law.

Jeffries ’10,

So what is ―qualified immunity‖? **Qualified immunity is the doctrine that precludes damages unless a defendant has violated ―clearly established‖ constitutional rights**.6 More fully, damages are barred if ―a reasonable officer could have believed‖ his or her actions to be lawful ―in light of clearly established law.‖7 This sounds simple enough, and there is every reason to suppose that the Supreme Court originally thought it so. Indeed, at one time, qualified immunity had two prongs: an objective requirement of reasonable grounds for believing one‘s conduct lawful and a subjective requirement of actual good-faith belief in the legality of that conduct.8 The subjective branch proved troublesome. Given the broad discovery standards in civil litigation, plaintiffs could rummage around in a defendant‘s background to find evidence suggestive of malice or bad faith. Accordingly, **the Supreme Court lopped off the subjective branch, leaving only the requirement of ―objective reasonableness** of an official‘s conduct, **as measured by reference to clearly established law**.‖ 9 Though conceptually amputated, the resulting doctrine was justified precisely on the ground that the pared-down focus on ―clearly established‖ rights could be easily administered, usually on pre-trial motion. SK

#### First, individuals give their life value by revolting against previously held conceptions of ideology. Death without revolt holds no value as it denies the existence of one’s own subjective truth.

Camus**,** [Albert, *The Rebel*, 1951, Part 1: “The Rebel”. SK]

That **revolt gives life** its **value**. Spread out over the whole length of a life, it restores its majesty to that life. To a man devoid of blinders, **there is no finer sight** **than** that of the **intelligence at grips with a reality that transcends it**. The sight of human pride is unequaled. No disparagement is of any use. That discipline that the mind imposes on itself, that will conjured up out of nothing, **that face-to-face struggle have something exceptional** about them. To impoverish that reality whose inhumanity constitutes man’s majesty is tantamount to impoverishing him himself. I understand then why the doctrines that explain everything to me also debilitate me at the same time. They **relieve[s] me of the weight of my own life**, and yet I must carry it alone. At this juncture, I cannot conceive that a skeptical metaphysics can be joined to an ethics of renunciation. Consciousness and revolt, these rejections are the contrary of renunciation. Everything that is indomitable and passionate in a human heart quickens them, on the contrary, with its own life. **It is essential to die unreconciled** and not of one’s own free will. Suicide is a repudiation. **The absurd man can only drain everything to the bitter end**, and deplete himself. The absurd is his extreme tension, which he maintains constantly by solitary effort, for he knows that in that consciousness and **in that** day-to-day **revolt he [or she] gives proof of his only truth, which is defiance**. This is a first consequence. SK

#### Individuals are able to change ideologies because, independent of a cohesive ethical theory, each individual develops their conception of a moral obligation based on their own subjective viewpoint.

Zelic, [Zelić, Tomislav. "Nietzsches Theorie des Multiperspektivismus Revisited." Synthesis philosophica 22.1 (2007): 231-244. SK]

In Beyond Good and Evil, Nietzsche further elaborates his theory of multiperspectivism already outlined in my reconstruction of the main argument in “On Truth and Lies in the Non-Moral Sense”. In a nutshell, the theory states that **any judgment or belief is an interpretation of the world from a particular and limited point of view**.13 With emphasis on passages in Nietzsche’s work, where he denies the existence of truth outright, some commentators like Danto, employing the traditional refutation directed at any skeptic, have argued that his claims undermine themselves self-referentially and are thus self-contradictory. The self-contradiction of the purported denial of all metaphysical truth becomes all the more problematic when Nietzsche turns around to present his own genuinely metaphysical theories such as the genealogy of master and slave morality, the ethos of honesty [Redlichkeit], the eternal recurrence of the same, the will to power, and so on. Here, his critics maintain, it is obvious that he does raise claims not only to logical validity but also metaphysical truth. Now, I would like argue that the refutation by means of demonstrating selfcontradictions misses the point. In my view, it simply does not apply to Ni- SYNTHESIS PHILOSOPHICA 43 (1/2007) pp. (231–244) T. Zelić, Nietzsche’s Theory of Multiper- 237 spectivism Revisited etzsche’s theory of multiperspectivism, if we restate it in such a way that it is consistent in reference to itself and thus immune against all attempts at demonstrating internal self-contradiction. To put it most succinctly, ‘**Every statement is perspectival’**. If we test it for self-referential coherence, we will immediately realize that this statement about all statements does not contradict itself. **It neither states a purportedly absolute truth nor does it raise any claims to validity**. It neither denies the existence of truth in general terms nor does it deny that specific statements to the contrary are not true. The crucial point of the statement is that **the truth of any statement is always already and time and again in question.** It may be true now. But **it may always turn out to be false from a different, more ‘objective’ point of view**. SK

**A.** Precludes – subjectivity is a prerequisite to ethical evaluation **B.** If subjectivism is true, you would affirm because limiting qualified immunity means that each individuals’ standard of right or wrong police action determines their guilt, not just the standard prescribed by the constitution as right or wrong. **C.** framework outweighs on topical specificity – the resolution is a discussion of subjective good versus constitutional good.

#### Thus, obligations made based on rules or standards can never be binding. Each individual would choose a different assertion in which to terminate which means that each individual’s preference determines their will.

Verheggen, [Verheggen, Claudine. "Wittgenstein's Rule‐Following Paradox and the Objectivity of Meaning." Philosophical Investigations 26.4 (2003): 285-310. SK]

2. **The paradox**, in Wittgenstein's words, **is that 'no course of action could be determined by a rule because every course of action can be made out to accord with the rule**.' (1958, #201) The notion of a rule Wittgenstein is dealing with here is, to be sure, paradoxical. For a rule according to which everything one does can be made out to accord with it is not a rule.AsWittgenstein continues to spell this out, 'if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here.' (I958, #20l) Where there is neither accord nor conflict, there is no rule-governed activity; in particular, there is no linguistic activity. For, if no application of a linguistic expresion is either correct or incorrect, then there is no such thing as meaning anything by any expression. Thus the paradox seems to have as a consequence that 'the entire idea of meaning vanishes into thin air', as Kriplte put it. (1982, p. 22) This truly devastating, indeed sellldefeating, conclusion can be avoided, however.All this takes is to recognize, as\X/ittgenstein imme- diately tells us, that the paradox is based on a misunderstanding, which is to think that there is no way of grasping a rule which is not an interpretation. He writes: It can be seen that there is a misunderstanding here from the mere fact that in the course of our argument we one interpreta- tion after another; as if each contented us at least for a moment, until we thoufitt of yet another one standing behind it. **What this shows is that there is a way of grasping a rule which is not an inter- pretation**. (I958, #201) Presumably, the suggestion here is not that grasping a rule never is an interpretation - after all, an expression is sometimes understood by being interpreted, i.e., by being explained in other, familiar words - but the suggestion is that not every expression could be under- stood in this way. Now **since**, according to Wittgenstein, **the paradox lies in the idea that every course of action can be made out to accord with the rule, the suggestion is that it stems from the idea that a rule can always be interpreted in such a way that every course of action can be made out to accord**, or to conflict, **with it**, as the case may be. And **so the paradox does seem to stem from the idea that grasping a rule always is an interpretation.** This part of the diagno- sis is not disputed by the commentators I am considering. But it is only the preliminary stage of \XI'ittgenstein's diagnosis. What must be investigated next, and what is controversial, is the reason why anyone would think that grasping a rule is always an interpretation in the Is: place. What conception of a rule would have to be in play? SK

**A.** Takes out constitutional justifications for qualified immunity as we cannot ascribe ourselves to laws that determine punishment. **B.** This means that all interpretations and role of the ballots are infinitely meetable as a rule or obligation has no essence as a concept because subjective individuals can define the rule as whatever they want. **C.** Objective moral standards do not exist – all frameworks that assert some universal moral ethical or principle based standard that should apply in every instance thus cannot guide action.

#### Thus, statements that purport to guide action cannot defend that something is right or wrong, but rather express a way to view “the good” – the 1AC will defend that the standard would imply the resolution merely because the process of the 1AC is necessary to strive toward determining right and wrong.

Zelic 2, [Zelić, Tomislav. "Nietzsches Theorie des Multiperspektivismus Revisited." Synthesis philosophica 22.1 (2007): 231-244. SK]

Be that as it may. More importantly, whether or not Nietzsche denies the existence of metaphysical truth is entirely secondary to his **theory** of multiperspectivism. He **is primarily interested in overcoming the dogmas of conventional metaphysics, epistemology, and morality.** In order to understand the divorce of the theory of multiperspectivism from the theory of truth and its moral implications, we should elucidate Nietzsche’s concepts of life and the will to power as well as the dangers of the ascetic ideal in philosophy. For Nietzsche, life means that human beings adopt a finite and insecure point of view on their lives, since human life itself is finite and insecure. Furthermore, it sometimes requires painful changes of perspective and yet the purpose of life is and remains living life in order to enhance life. **It is simply a condition of human life that it constantly requires ever new interpretations and reinterpretations, radical adjustments, revisions, and corrections**. “Life itself is essentially appropriation, injury, overpowering of what is alien and weaker, suppression, hardness, imposition of one’s own forms, incorporation and at least, at its mildest, exploitation […].”14 Forgetting or ignoring this ‘truth’ would result in the slow disintegration and finally the absolute negation or total annihilation of life: premature death. The organic condition of life predetermines human beings materially, physiologically, and mentally. For their bodies to be proactively living bodies, “… it will have to be an incarnate will to power, it will strive to grow, spread, seize, become predominant – not from any morality or immorality but because it is living and because life simply is will to power”.15 Nietzsche anticipates and carefully preempts possible objections to this. Any physiologist or psychologist, he concedes, would have to face moral and methodological scruples before arriving at such ‘truths’ beyond good and evil, because of “the power of moral prejudices”, the “unconscious resistances in the heart of the investigator” and the “distress and aversion” caused by them.16 However, once we realize that all interpretations always include 10 F. Nietzsche, “On Truth and Lies in the NonMoral Sense”, p. 148. 11 F. Nietzsche, Beyond Good and Evil, interim. 12 F. Nietzsche, “On Truth and Lies in the NonMoral Sense”, p. 143. 13 F. Nietzsche, Beyond Good Evil, §§ 2, 9, 14, and 34. See also Friedrich Nietzsche, The Will to Power, §§ 481, 657, 602, and 616. 14 F. Nietzsche, Beyond Good Evil, § 259. 15 Ibid. 16 Ibid., § 23. SYNTHESIS PHILOSOPHICA 43 (1/2007) pp. (231–244) T. Zelić, Nietzsche’s Theory of Multiper- 238 spectivism Revisited “tyrannically inconsiderate and relentless enforcement of claims of power” and the “unexceptional and unconditional aspects of all ‘will to power’”,17 **we will have overcome** not only our scruple but also **dogmatic morality itself**. From a strictly physiological and psychological point of view, Nietzsche determines the essential principle of organic existence to be the will to power. The fundamental purpose of life is the proactive and joyful affirmation and enhancement of life; life as an end in itself. “A living thing seeks above all to discharge its strength – life itself is will to power; self-preservation is only one of the indirect and most frequent result.”18 The “instinct of self-preservation [Selbsterhaltungstrieb]” is a one of the “superfluous teleological principles”.19 On the one hand, both the instinct of self-preservation and the will to truth or “the drive to knowledge [Trieb zur Erkenntnis]”20 are merely secondary instruments or means of the will to power. On the other hand, the will to untruth and deception might serve the will to power better than the will to truth and truthfulness in many particular cases.21 In several places, Nietzsche warns us against philosophical martyrdom, i.e., “the suffering for the sake of truth”.22 The problem with “the general renunciation of interpretation”, “the faith in truth”,23 and “the will to truth, to ‘truth at any price’”,24 is the ascetic ideal: the devaluation of the natural world and the denial of life and more specifically “the impoverishment of life” and “the self-belittlement of man”.25 **Multiperspectivism is fairly and simply “a basic condition of life**”.26 An individual freely chooses a cognitive point of view, which is most advantageous to his life, will to power, and specific interests in life-enhancement. But that does not mean that the individual abides by the chosen perspective obdurately or rigidly. **There are indefinitely many points of view to choose from on a single object or issue**. Why would one prefer a single ‘immediate certainty’ if there are inexhaustibly many possibilities? **The philosopher, as Nietzsche envisions him, needs to be inquisitive to the point of “cruelty”27 and he has a “duty to suspicion”,28 first and foremost regarding his own prejudices and thought process. In fact, he “will look for error precisely where the instinct of life most unconditionally posits truth”.29** According to Nietzsche, he **should be ready for any revaluation of values or change of perspectiv**e, which might be called for in any given situation. The theory of multiperspectivism enables the philosopher to see any given thing or issue from ever new and different points of view. For Nietzsche, that is precisely “the discipline and preparation of the intellect for its future ‘objectivity’”.30 Nietzsche understands the philosopher’s ‘objectivity’ in a very unconventional way. For him, it is the ability to weigh arguments against counter-arguments, master each of them separately, and change from one to the other flexibly. This **training will help the philosopher to “employ a variety of perspectives and affective interpretations in the service of knowledge** [Erkenntnis]”.31 **Since all knowledge is perspectival, the more points of view we are able to adopt to understand any given thing or issue, “the more complete will our ‘concept’ of this thing, our ‘objectivity’, be”.**32 Once again, **the notion of the ‘correct point of view’ is nonsensical. For us to be able to determine the more correct of two given points of view would require us to take a third point of view, from which we would have to claim that it alone grants the exclusive access to the thing-initself.** However, the third point of view could always be outperformed by a forth more ‘objective’ point of view and so on ad infinitum. Likewise, the question as to whether human existence without perspectival cognition would destroy the very interpretability of human existence and its SYNTHESIS PHILOSOPHICA 43 (1/2007) pp. (231–244) T. Zelić, Nietzsche’s Theory of Multiper- 239 spectivism Revisited possession of any possible meaning or whether human existence necessarily always implies proactive engagement in perspectival interpretation, “cannot be decided even by the most industrious and scrupulously conscientious analysis and self-examination of the intellect”.33. SK

Impacts: **A.** We only defend that the resolution would be preferable in a system where we care about determining right and wrong, so de-justifying the dominance of moral systems does not deny or criticize an assumption of the affirmative, but proves why the 1AC is necessary. **B.** the 1AC method controls the internal link for metaphysical questions such as identity because those are dogmas that limit our subjective appropriation of the good **C.** to negate means “to deny”, so the negative must disprove that the affirmative *leads to communication*, so proposing a counter-policy wouldn’t negate under the framework because it does not disprove the subjective attitude of approval the 1AC has towards the resolution. **D.** the res only means that a state of affairs where the resolution happens is preferable because it facilitates determining action – the question of “who” takes the action does not matter because subjectivity is inevitable – the action itself is what matters. **E.** Moral “truths” cannot exist but we have constitutive obligations as living actors to determine more conceptions of the “good” which is why we should affirm.

#### This radical and constant alterations of perspectives occurs through creativity. This bridges the gap between “objective” morality and subjectivism. Creativity arises through spontaneous action in reaction to shifts in circumstances caused by natural forces. The 1AC is inherently creative as it is a shift from the status quo so vote aff – otherwise we would keep ourselves tied down to previously held conceptions of reality.

Connolly 13 writes[[2]](#footnote-2)

As individual and collective agents of multiple types, **we exercise one dimension of freedom when we pursue existing desires and another when we reflexively reconsider them** and seek outlets to act upon revised desires. But those desires are not merely given in the first instance, and the reflexive process in the second does not always render explicit what was already “implicit” in operative assumptions and desires. There is often more pluripotentiality in the rush of desire forward to consolidation in action than is captured by the lazy idea of the implicit. There is also pluripotentiality during those fecund moments when an entire constituency coalesces under new circumstances, with the change in “circumstances” often shaped by rapid shifts in nonhuman force fields with which they are involved. In such circumstances the creative element of freedom comes into play. To put the point briefly, **neither the tradition of negative freedom nor that of positive freedom comes to terms sufficiently with the role of creativity in freedom**. **Creativity** here **means**, as a first cut, **action by the present upon ambiguities arising from the past oriented toward the future in a way that is not entirely reducible to the past as either implicit in the present or an aggregation of blind causes that produce the future**. It might involve an exploratory movement back and forth between different parties in a cloudy situation that issues in a new result none intended at the start. These initiatives may then be consolidated by disciplinary processes and tactics that help to sediment them into the soft tissues of cultural life. Reflexivity, you might say, begins to do its work after the uncanny, creative element in freedom has begun to unfold, for good or ill. Creative processes flow through and over us, and reflexivity doubles the creative adventure. **Actions are thus not entirely controlled by pre-existing intentions**; rather **the creative dimension helps to compose and refine intentions as they become consolidated in action.** To articulate the creative dimension of freedom, then, is to insert a fundamental qualification or hesitation into the ideas of both the masterful agent and agency as the activation of intentions already there. The creative element is located somewhere between active and passive agency. When creative freedom is underway in an unsettled context we may find ourselves allowing or encouraging a new thought, desire, or strategy to crystallize out of the confusion and nest of proto-thoughts that precede it. An agent, individual or collective, can help to open the portals of creativity, but it cannot will that which is creative to come into being by intending the result before it arrives. Real creativity is thus tinged with uncertainty and mystery. The creative dimension of freedom discloses an ambiguity that haunts extant ideas of intention, desire, agency, and reflexivity. It exposes the ambiguity of agency in the practice of freedom. This ambiguity may find expression, say, in a basketball game as an accomplished player under intense defensive pressure spontaneously fires up the first jump shot ever attempted amid the flow of action. The shot, initially lacking a name, surprises the shooter and mystifies defenders. It was not implicit in the athlete’s repertoire; it emerged in the pressure of action. After being repeated, named, and perfected through relentless training, it may spread like wildfire across the basketball landscape, as that type of shot did in the 1950s in the United States. Everything else in the game now shifts to some degree too. Other players, coaches, and referees now adopt creative responses to it, generating changes in the game through a mélange of partisan mutual adjustments that no individual or organization intended at the outset. Or take a young point guard who spontaneously completes a fast break with a blind, behind-the-back pass and then finds himself negotiating with his coach to decide just when such passes can be allowed in the future. Such modes of creative, mutual adjustment, neither simply assignable to one player or coach, nor fitting neatly into extant notions of preformed intention, nor reducible to a reflexive dialectic, occur all the time in multiple domains. They form[s] part of the essence of freedom. Spontaneous creativity is accompanied by an element of real uncer- tainty; it occurs in that liminal moment when the limits of an activity have been experienced and before a definitive response to that limit has emerged. It thus occupies a fecund zone of indiscernibility. The result can be checked after the fact to see whether the results are positive or negative. A behind-the-back shot, for instance, might arise spontaneously in the ï¬‚ow of a game, startling the defense the first time it is enacted. It is apt, how- ever, to turn out to be too hard to perfect and too easy to defend once other teams adjust to the initial surprise. The example of the first jump shot. however, does not adequately take into account how the very context of action may sometimes change through an even more rapid shift in circumstances. To fill that bill you would need to have a setting in which a significant shift in the rules governing the game had been made, or, better, the players now find themselves in a new situa- tion in which the opponent has a roster with only seven-foot players. Cre- ative freedom, then, is spontaneous activity within a shifting setting with constraints in which an element of real uncertainty circulates through the setting. The spontaneity now ï¬‚ows through the agents and the open-ended rules of the practice, for good or ill. It operates within limits, even though those limits cannot all be stated in advance. It is unlikely. for instance. that a point guard will spontaneously ï¬‚ap his arms to ï¬‚y from the backcourt to the basket in order to dunk the ball, no matter how intense the defense is. Human arms lack the needed preadaptations to negotiate such a maneuver, even though a few players do start a dunk at the free-throw line. If **creativity finds expression in** the human estate, it will sometimes do so at surprising moments during a disruption in a practice, opening the door to a scientific invention, a new concept, a political initiative, **a new social movement**, an artistic innovation, market spontaneity, a language change, a cooking invention, teaching improvisation, a new type of film scene, a musical production, the use of new media, or the invention of a new product. And so on endlessly. **Our identification with life** – our tacit sense of belonging to a human predicament worthy of embrace – is partly rooted in reflexive reconsideration of established desires and ends. But it **is grounded** too **in** those uncanny experiences of **creativity by means of which something new enters the world**. This may be one of the reasons people cleave to the sweetness of life. It **[creativity] ties the sweetness of life to a vitality of being**, even more than to a preordained end, purpose, or “fullness” with which it is officially invested. **The intimate relation between freedom and creativity is why freedom is never sufficiently grasped by the idea of a lack to be fulfilled**, successful action upon preset desires, or the drive to render the implicit explicit. The experience of uncertainty or incompleteness is sometimes an occasion of fecundity.

#### The aggregation of individual creative perspectives and the way to enhance this perpetual realization takes form only through some form of communication which serves to work out a shared understanding – otherwise we would only have subjective morality based on individual perceptions.

Habermas, [The inclusion of the Other. Studies in Political Theory. Jürgen Habermas. [MIT Press](http://mitpress.mit.edu/), 1998, parts VIII and IX of Chapter 1]

I proceed on the assumption that the **participants** do not **wish to resolve** their **conflicts through** violence, or even compromise, but through **communication**. Thus their initial impulse is to **[They] engage in deliberation** and **[to] work out a shared *ethical*self-understanding** on a secular basis. But given the differentiated forms of life characteristic of pluralistic societies, such an effort is doomed to failure. The participants will soon realize that **the critical appropriation of their strong evaluations leads to competing conceptions of the good.** Let us assume that they nevertheless remain resolved to engage in deliberation and not to fall back on a mere *modus vivendi* as a substitute for the threatened moral way of life. **In the absence of** a **substantive agreement** on particular norms, **the participants must** now rely on the “neutral” fact that each of them **participate**s **in *some*communicative form of life** which is structured by linguistically mediated understanding. Since **communicative processes** and forms of life have certain structural features in common, they could ask themselves whether these features **harbor normative contents that** could **provide a basis for shared orientations**. Taking this as a clue, theories in the tradition of Hegel, Humboldt, and G. H. Mead have shown that **communicative actions** involve shared presuppositions and that communicative forms of life **are interwoven with relations of reciprocal recognition**, and to this extent, both **[and] have a normative content**. These analyses demonstrate that **morality derives** a genuine **meaning**, independent of the various conceptions of the good, **from** the form and perspectival structure of unimpaired, intersubjective **socialization.**

Prefer additionally:

**A.** Moral norms do not exist so our temporal conception of “good action” must arise from the communication between individuals but we cannot prescribe any actions besides those that promote communication **B.** AC framework precludes because all others presume the validity of communication. **C.** Argumentation itself presumes the necessity of communication which means that my framework is probably the best method to solve any kritik as critique can only happen through deliberation. **D.** it is a performative contradiction to deny the framework because you use communicative deliberation to do that in the first place. **E.** The 1AC is not concerned with the end result but the process of actions – if the action inherently rejects a stunting of communication that would be sufficient to affirm. **F.** Emphasizing communication of perspectives is key to make excluded perspectives feel as if they are included. The affirmative is concerned with what you do with perspectives which is to communicate them so the mere act of stopping exclusion of perspectives would not turn the 1AC.

#### Thus, under the framework, the affirmative must prove that limiting qualified immunity allows us to determine conceptions of truth. The negative counter-perspective would prove that qualified immunity allows us to determine conceptions of truth better.

#### The thesis of the 1AC is that limiting qualified immunity protects communicative deliberation.

**First,** Qualified immunity rejects communication in the judicial space as prosecutors cannot prosecute a police officer and discuss the merits of officer action. This is a necessary form of communication as it allows us to discuss what is “right” or “wrong” police officer action, a necessary moral standard for evaluating police officer action.

Hassel, [Diana Hassel, Living a Lie: The Cost of Qualified Immunity, 64 Mo. L. Rev. (1999) Available at: <http://scholarship.law.missouri.edu/mlr/vol64/iss1/9>. SK]

In Part IV, I explore both the usefulness of a doctrine such as **qualified immunity** that **allows substantive choices to be made silently** and the costs inherent in such a doctrine. While the **qualified immunity defense arguably encourages quiescence by letting steam out of what might otherwise be a divisive area of public debate**, **we pay a high cost for its sedative effect**. The defense encourages us to pretend that we have an even-handed way to address a wide range of civil rights violations. In fact, we do not. That no such system for redress is in place is, in perhaps some unarticulated way, known to the participants and onlookers in the civil rights drama. However, **qualified immunity makes it possible to avoid the necessity of directly facing the question of which kinds of constitutional wrong**s, if any, **should be redressed** by damage award:

Outweighs:

**A.** Precludes a discussion of officer efficiency as we can only determine what is “efficient” if we have a conception of right or wrong police action. **B.** Scope – in the context of the executive and judicial branch, we need checks on officer action that determine whether that action is good or bad based on each specific situation. **C.** Guts neg offense – if an officer violates the constitution they are not an officer anymore so the only discussion that would happen is if they are not a police officer which falls outside of the topical limits of the resolution. **D.** Cyclicality – masks violence otherwise because there is never a discussion of officer action unless if it violates the constitution.

#### Second, ascribing ourselves to the law such as the constitution through qualified immunity is a way of forcibly aligning ourselves with rules or norms which are never binding. The 1AC is a method of seizing back rules by inserting our own opinions into the space of judgement.

**Foucault,**

**“Emergence is thus the entry of forces;** it is their eruption, the leap from the wings to center stage, each in its youthful strength. What Nietzsche calls the Entstehungsherd of **[T]he concept of goodness is not specifically the energy of the strong or** the reaction of the **weak, but** precisely **this scene where they are** displayed superimposed or **face-to-face.** It is nothing but the space that divides them, the void through which they exchange their threatening gestures and speeches. As descent qualifies the strength or weakness of an instinct and its inscription on a body, **emergence designates a place of confrontation,** but not as a closed field offering the spectacle of a struggle amount equals. Rather, as Nietzsche demonstrates in his analysis of good and evil, it is **a “non-place,”** a pure distance, which indicates that the adversaries do not belong to a common space. Consequently, no one is responsible for an emergence; no one can glory in it, since it always occurs in the interstice. In a sense, **only a single drama is ever staged in this “non-place” the endlessly repeated play of dominations.** **The domination** of certain men over others **leads to the differentiation of values;** class domination generates the idea of liberty; **and the forceful appropriation of things** necessary to survival and the imposition of a duration not intrinsic to them account for the origin of logic. **The relationship of domination is** no more a “relationship” than the place where it occurs is a place; and, precisely for this reason, it is **fixed, throughout** its **history**, in rituals, in meticulous procedures that impose rights and obligations. It establishes marks of its power and engraves memories on things and even within bodies. **It** makes itself accountable for debts and **gives rise to the universe of rules, which is by no means designed to temper violence, but rather satisfy it.** Following traditional beliefs, it would be false to think that total war exhausts itself in its own contradictions and ends by renouncing violence and submitting to civil laws. On the contrary, **the law is calculated** and relentless pleasure; delight in the promised blood, **which permits the perpetual instigation of new dominations and** the staging of meticulously **repeated scenes of violence. The desire for peace,** the serenity of compromise, **and the** tacit **acceptance of the law,** far from representing a major moral conversion of a utilitarian calculation that gave rise the law, **are but its result and**, in point of fact, **its perversion**: “guilt, conscience, and duty had their threshold of emergence in the right to secure obligations; and their inception, like that of any major event on earth, was saturated in blood.” Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare; **humanity installs each of its violence in a system of rules and** thus **proceeds from domination to domination.** The nature of these rules allows violence to be inflicted on violence and the resurgence of new forces that are sufficiently strong to domination those in power. **Rules are empty in themselves, violence and un-finalized; they** are impersonal and **can be bent to any purpose. The successes of history belongs to those** who are **capable of seizing** these **rules, to replaces those who had used them**, to disguise themselves so as to pervert them, **invert their meaning**, and redirect them against those who had initially imposed them; **controlling this complex mechanism, they will make it function so as to overcome the rulers through their own rules.** The isolation of different points of emergence does not conform to the successive configurations of an identical meaning; rather, they result from substitutions, displacements, disguised conquests, and systematic reversals. If interpretation were the slow exposure of the meaning hidden in an origin, then only metaphysics could interpret the development of humanity. But if **interpretation is the violent** or surreptitious **appropriation of a system of rules, which** in itself **has no essential meaning**, in order to impose a direction, to bend it to a new will, to force its participation in a different game, and to subject it to secondary rules, then the development of humanity is a series of interpretations. The role of genealogy is to record its history: the history of morals, ideals, and metaphysical concepts, the history of the concept of liberty or of the ascetic life; as they stand for the emergence of different interpretations, they must be made to appear as events on the stage of historical process**.”**

#### Third, Qualified immunity is inherently a masking tool which stunts debate and discussion and precludes strategies for change – it means the 1AC is always the first step. It denies deliberation which hampers the *possibility for consensus* because people are not given a voice in the first place.

Hassel, [Diana Hassel, Living a Lie: The Cost of Qualified Immunity, 64 Mo. L. Rev. (1999) Available at: <http://scholarship.law.missouri.edu/mlr/vol64/iss1/9>. SK]

Current **qualified immunity doctrine serves as a means to diffuse conflict**. **Without a clear rule** that some kinds of civil rights harms will not be redressed, **there is minimal pressure for change**. **This "hiding of the ball'' quality of qualified immunity is why, in spite of many expressions of dissatisfaction with the system, there had been little effective rallying for change.** The reason the discontent of the participants in this system has not led to a significant change is that **the terms of the debate are defined by the immunity system** rather than by the fundamental question of the extent of rights and liabilities in civil rights actions. **The civil rights remedial scheme organized around qualified immunity thus has an inherently self-preserving or stabilizing quality**. It allows for tinkering at the margins, but fundamental recasting of the terms of the debate is unlikely. My assertion that **qualified immunity has a camouflaging effect** on civil rights law is supported by a large body of scholarship that explores legal regimes that define reality in a way that limits the ability of the participants in the system to change it.'" These scholars argue that when a legal system is accepted as being the only available way to organize an activity and thus seems inevitable, **the legal system encourages acceptance of the status quo**."' The insights gained by scholars working in this area are helpful to apply to the qualified immunity standard in order to explore its hold on the civil rights imagination. This analysis maps out the way **a doctrine such as qualified immunity can develop into an obstacle to the very aims it professes to accomplish. Particularly apposite** to an analysis of civil rights law **is the work** that has been done **on** the change-inhibiting impact of the development of **antidiscrimination law**.'" In commenting on the effect of the adoption of equal rights rhetoric on the struggle to end racial inequality, Kimberle **Crenshaw** has **concluded that** "[s]**ociety's adoption of the ambivalent rhetoric of equal opportunity law ha[s] made it that much more difficult for Black people to name their' reality**. While equal employment opportunity law has been adopted, the material reality of most Black people has not improved.""Â° In fact, improvement may be hindered by the existence of the equal opportunity law since **it may undermine the political consensus necessary for change**." ' Another commentator has suggested that "the language of rights undermines efforts to change things by absorbing real demands, experiences, and concerns into a vacuous and indeterminate discourse. The discourse abstracts real experience and clouds the ability of those who invoke rights rhetoric to think concretely about real confrontations and real circumstances."'" The existence of antidiscrimination law can thus create the appearance of improvements in racial equality while at the same time not encouraging fundamental change.'" The focus on the intent of the actor in equal protection claims rather than the impact on the person experiencing the discrimination has also been criticized as an inhibitor to the elimination of racial inequality." By paying exclusive attention to the blarneworthiness of the defendant, an examination of the impact of the challenged practice on those complaining about it is lost. Fairness to the defendant, rather than eliminating discriminatory efiect, is the central concern. These commentators suggest that the economic and social reality of race inequality is obscured by the existence of antidiscrimination law and by the success of a small exceptional group. As Derrick Bell has stated, "Discrimination claims when they are dramatic enough and do not threaten majority concerns, are given a sympathetic hearing, but there is a pervasive sense that definite limits have been set on the weight that minority claims receive when balanced against majority interests."'" While it is unclear what the alternative to antidiscrimination law is, these critiques strongly argue that antidiscrimination law does not do what it suggests it will do and may, in fact, make a better system more difficult to imagine and thus to create. This current critique of antidiscrrnination law can be used to understand how the qualified immunity standard affects the system of compensation for constitutional wrongs. One major similarity is the way in which the existence of Section 1983 siphons off pressure to create some other system of redress. The open-ended language of the Section 1983 statute seems to promise a powerfirl remedy against governmental abuse. As we have seen, qualified immunity severely limits that remedy, but on a case-by-case basis. There is no general prohibition against certain types of civil rights claims, only the seemingly individualized application of the qualified immunity defense. The fact that some types of claims are destined to fail because of the type of claim they are, not because of the particularized behavior of the defendant, is hidden. Adding to the illusion of a generally available remedy is the spectacular succws of a few high profile cases. A few large recoveries in cases that present particularly compelling facts obscure the reality of the fruitlessness of most claims."' On the other side of the lawsuit, qualified immunity promises much more to the defendant than it delivers. The defense is supposed to protect govemment actors not only from liability but also from entanglement with litigation. The promise is often not kept because the qualified immunity defense presents a combination of fact and law questions that cannot be quickly disposed of prior to trial. However, the theoretical protection offered by the defense and the low incidence of actual judgments against government actors lulls government employees into acquiescence to the system. The emphasis that qualified immunity places on the reasonableness of the defcndant's actions rather than on whether a constitutional right was violated is another way in which qualified immunity distorts civil rights law. **Qualified immunity makes the essential issue of a civil rights claim the question of whether it would be too much of an inhibitor of government action to require a particular defendant to pay damages** to the plaintiff. The focus is not, at least initially, on whether the plaintiffs constitutional rights were violated. This emphasis also makes it difficult to discern and consider which rights are or should be protected and which we are content not to protect with monetary compensation. **Qualified immunity**'s harm is that it **makes it difficult to see the policy choices made by courts** in civil rights actions. **Cloaking these policy choices in the qualified immunity doctrine** avoids the possibility of an open debate **concerning which civil rights should be protected and how**. SK

Impacts: **A.** we preclude a discussion of whether qualified immunity is good or bad because in the status quo the debate is cloaked – that’s inherency – and we need to repeal it to break free of all of the camouflage of law surrounding the issue **B.** The 1AC’s philosophical question precludes policymaking because we cannot evaluate policies as they are cloaked within ideology **C.** Political consensus is the necessary first step to address issues of structural violence.

## 1AR

### 1AR v Theory (0:50)

#### There are many conceded implications out of the affirmative that serve as (1) independent critiques of theory and (2) negate the idea of theory.

#### First, extend Camus – acts of revolt against ideologies are good – endorse the 1AC as a revolt against theoretical hegemony.

**Second, extend Zelic – subjectivism means that we cannot claim validity for any objective or contextual standard so theory can never be binding – two impacts:**

**A. Terminal Defense on the voter – judge cannot have contractual obligation to vote on rules**

**B. I meet your shell – you cannot bind a violation of a rule on me because rules are never binding**

**Third, extend Verheggen and the B point under Verheggen which says that rules or interpretations are never binding because subjective individuals can interpret the rule as whatever they want. This is terminal defense on the violation which means that I MEET your shell.**

**Fourth, extend Connolly – theory would limit freedom and thus creativity – creativity is an independent voter because it allows us to determine better ways that debate can occur which makes your shell contradictory.**

**Fifth – framework subsumes theory – communication is how you create norms in the first place per Habermas so we control the internal link to your interpretation.**

**Sixth – extend Foucault 2 which says that any sort of rule or norm is empty absent a sovereign which means that your interpretation has no value and is not binding which is terminal defense on all of your interps. Impacts:**

**A. There is no net benefit, i.e. no offense on reading theory.**

**B. you’ve conceded that rules can be bent to any purpose which means that there is no concrete meaning on a rule – this argument is literally rule following skep – it means that I meet your interpretation because all rules can be met.**

**C. Rules lack value absent a sovereign such as the judge to endorse them, but the judge endorsing a rule presupposes that it has value in the first place so asking the judge to vote on theory is circular.**

### 1AR v States CP

#### Turn – federal ban of qualified immunity key to shifting jurisdiction back to states.

Waxman and Morrison 03, [Waxman, Seth P., and Trevor W. Morrison. "What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause." Yale Law Journal (2003): 2195-2259. SK]

**One question** arising out of our discussion of Supremacy Clause immunity **is whether “Our Federalism” requires federal-state symmetry** **in matters of** intersovereign **prosecution and immunity**. To address that question, we conclude Part III by considering Akhil Amar’s proposal that States enact statutes creating civil rights of action against federal officers who violate the national Constitution.19 We think States probably could enact such statutes as a general matter. The real question, however, is whether and to what extent they could depart substantively from the available federal remedies. On that point, we disagree with Amar’s suggestion that States could subject federal officers to greater liability than they are subject to in federal causes of action under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics. 20 In particular, **unless qualified immunity is eliminated (legislatively or judicially)** in the Bivens context, we think **States could not do so in the kinds of statutes** Amar proposes. **Any such statute would**, we think, **be subject to implied conflict preemption on the ground that it conflicts with the federal interest in qualified immunity for federal officers.** **A federal officer’s qualified immunity** in a Bivens or similar action serves and **reflects a federal interest**. Specifically, by according federal officers qualified immunity, the federal courts (and implicitly Congress insofar as it has chosen not to abolish qualified immunity) respect the important federal interest in protecting against the “risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties.”194 This is not just a personal interest of the officer, but an institutional interest of the government: **The federal interest in the integrity of federal law includes an interest in the ability of federal officers to enforce the law free from state interference.** Principles of implied conflict preemption suggest that the States may not intrude upon that interest. **Qualified immunity prevents them from doing so**. SK

#### Turn – QI is needed for federal state equality in the squo – QI increases federal power.

Waxman and Morrison ’03, [Waxman, Seth P., and Trevor W. Morrison. "What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause." Yale Law Journal (2003): 2195-2259. SK]

This history, like that of the FTCA and the cases predating its amendment, confirms the two principal points of our thesis. First, **Congress is the ultimate arbiter of the extent to which federal officers may be subject to state law**. In the CPA, Congress made a decision quite unlike its decision in the FTCA: Rather than granting federal officers broad immunity from state law, it subjected federal attorneys to the full force of the rules governing attorney conduct in the States where they act. This presumably includes all disciplinary proceedings and penalties to which an attorney may be subject for violating a State’s rules. The CPA’s apparent withdrawal of all federal immunity in this area, like the FTCA’s broad conferral of immunity in the areas to which it applies, is well within Congress’s discretion. Second, prior to the CPA’s passage, the Justice Department’s regulations permitted state law to apply in instances where it clearly did not conflict with federal standards.215 This attentiveness to federal-state conflict comports with our approach to Supremacy Clause immunity in the absence of express congressional instruction. In that context, as we have argued, **a measure of officer immunity akin to qualified immunity is necessary to ensure that federal law and policy is effectuated free from state interference**. Until Congress decided in the CPA to make compliance with state rules a matter of federal policy, the **Justice Department’s regulations** pursued the same objective animating our approach to Supremacy Clause immunity: **ensur**ing **that state law considerations did not chill or otherwise compromise federal prosecutors’ reasonable pursuit of federal aims**.216

### 1AR v Civilian Review Board

Balko ’16, [Washington Post(), Can South Carolina’s police culture be fixed?, xx-xx-xxxx, xx, https://www.washingtonpost.com/news/the-watch/wp/2016/06/02/can-south-carolinas-police-culture-be-fixed/, 11-10-2016. SK]

Another alternative is a civilian review board, or an independent police auditor. Studies do show that civilian review boards sustain complaints against police more often than police departments that review themselves. But while there are a few examples of successful **review boards**, many others **have been beset by problems**, **including lack of funding, backlogs, public mistrust** **and the lack of** subpoena and investigatory **powers** (which forces them to rely on internal police investigations). A 2001 Justice Department **study of nine review boards** across the country **found that** seven of the nine had a staff of less than five, and all but three had two or fewer full-time employees. In some jurisdictions, **the review board’s findings can be overturned by the police chief**, the sheriff or a mediator. In others, the board has no disciplinary power at all, or what power it has can also be overruled. Any proposal that includes a panel or board to review complaints against police officers also faces the problem of how to populate it. In most cities, **citizen review boards are appointed by the mayor, city council or some combination of both**. Appointments can be susceptible to pressure from police unions and police advocacy organizations, which if unchecked **can make the board little more than a rubber stamp**. In some cities, **police unions have openly advocated sabotaging review boards**. In others, they’ve successfully lobbied to dissolve the board or to dilute its powers. SK

### 1AR v Court Clog

1. QI makes law clearer so we have less court cases as we clarify what the law is

### 1AR v Grand Juries

Anarchyst ’16,

There is much angst and consternation over prosecutors and grand juries who refuse to bring charges against police officers, even when incontrovertible evidence is presented. Even with incontrovertible audio and video evidence, prosecutors are loath to prosecute rogue law enforcement personnel.

Let’s examine the reasons why it is so difficult to prosecute thug cops: most prosecutors are former police officers or have extensive dealings with police departments and have ongoing relationships with police departments in their respective jurisdictions. They are friendly with the judges in their jurisdictions, as well. This, along with “absolute immunity”, Prosecutors cannot be sued for malfeasance…it takes a judge or “master”, who the legislature appoints (who prosecutors are friendly with) to bring charges on a rogue prosecutor (which almost never happens).

In addition, prosecutors guide the actions of grand and petit juries. Prosecutors are not required to introduce any evidence to grand juries, and can and do easily “whitewash” the actions of rogue cops. On the other hand, prosecutors can (and often do) go after honest citizens who seek justice outside official channels…prosecutors have ultimate power and are not afraid to use it – their immunity sees to that.

Another aspect to a grand jury’s inability to prosecute bad cops is the fear of retribution…cops drive around all day, have nothing but time, have access to various databases, and can easily get the names and addresses of grand jurors…this, in itself can be a powerful deterrent against grand jurors who “want to do the right thing” and prosecute bad cops. There are many cases of cops parking in front of grand jurors’ residences, following them around, and threatening to issue citations to them, in order to “convince” them to “make the right decision”…the “thin blue line” at its worst…

The whole system has to change.

Eliminate absolute and qualified immunity for all public officials. The fear of personal lawsuits would be a powerful deterrent against abuses of the public. Any funds disbursed to civilians as a result of official misconduct must be taken from the police pension funds–NOT from the taxpayers. Grand juries must be superior to the prosecutor; ALL evidence must be presented to grand jurors. Failure to do so must be considered a felony and subject prosecutors to prosecution themselves. No police agency can be allowed to investigate itself. Internal affairs departments must be restricted to minor in-house investigations of behavior between cops. All investigations must be handled by outside agencies, preferably at the state level. Civilian police review boards must be free of police influence. Members of civilian review boards must have NO ties to police departments. Relatives of police would be prohibited from serving…Recently, the “supreme court” threw police another “bone”. The court ruled that police are not responsible for their actions if they are “ignorant of the law”…now, let’s get this straight–honest citizens cannot use “ignorance of the law” as an excuse, but cops can??

Revolution is sorely needed…..

### 1AR v TPP

1. William Connolly (Krieger-Eisenhower Professor of Political Science at Johns Hopkins University). The Fragility of Things: Self-Organizing Processes, Neoliberal Fantasies, and Democratic Activism. Duke University Press. 2013. [↑](#footnote-ref-1)
2. William Connolly (Krieger-Eisenhower Professor of Political Science at Johns Hopkins University). The Fragility of Things: Self-Organizing Processes, Neoliberal Fantasies, and Democratic Activism. Duke University Press. 2013. [↑](#footnote-ref-2)