

# **DETERMINING A LAW'S APPLICABILITY: HOW SOCIAL NORMS IMPACT LEGAL INTERPRETATION**

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In this essay, I argue that there is a relationship between written text and social norms which guides how we interpret legal language. This relationship is necessary since it ensures that written legal language reflect societal values. By reflecting societal values, laws remain relevant over time: laws are enforceable since society acknowledges that these laws are pertinent for the protection of societal values. In order to make this claim, I will first discuss why legal language relies upon ambiguity for interpretations of the law. I will then discuss how social norms narrow this ambiguity to guide the interpretation of written legal language. I will conclude by analyzing the language of the 14<sup>th</sup> Amendment to illustrate how the ambiguity of legal language constrained by social norms allow laws to remain relevant to a society over time. Throughout this essay, I will refer to legal language from the United States Constitution; I believe this document contains legal language which we are familiar with the written text as well as how this language is applied to our lives.

Before we can analyze the importance of social norms for legal language interpretations, we should visualize this proposition in a familiar context. The United States Constitution serves as a document that governs the behavior of US citizens. By governing behavior, the Constitution protects the rights of citizens. This document is created by the people for the people, forming a connection between the law and the people. This connection suggests laws influence citizens but also that citizens influence the contents and application of laws: we desire laws to protect our rights by reflecting values we deem important to

our society. When we interpret laws, we seek these values so we can make sense of the law in a context we can understand. Identifying cultural values allows us to apply the law to our lives. Thinking of this relationship between laws and societal values leads us to question: How does the wording of the Constitution guide our interpretation of laws? How do we interpret the laws of the Constitution to be applicable to our daily lives? Why does the Constitution have prominence in modern society despite its creation over two hundred years ago? To begin to answer these questions, we turn to the first point of my research: why written legal language is ambiguous in nature.

Ambiguity suggests an inexactness or inherent vagueness. This vagueness exists in legal language due to how laws are worded. Consider the following example:

No vehicle may be taken into the park.<sup>1</sup>

The law above does not specify what constitutes a vehicle: bikes, cars, and ATVs are all examples of vehicles, so what type of vehicle does this law relate to, if it is intended to refer to a specific kind of vehicle? Without specifying the type of vehicle, this law can apply to many kinds of cases regarding pedestrian safety in a park. For example, this law could apply to cases involving motorized vehicles or it could apply to cases concerning the kinds of leisure activities that are allowed in the park. This ambiguity or vagueness in what a rule suggests supports the notion that law creates inexact knowledge, or knowledge that may not be understood to be entirely true or false.<sup>2</sup> An entirely true or false statement is descriptive in the sense that it captures how something is; a descriptive statement is factual and cannot be refuted. Normative statements dictate how something ought to be. Laws are normative rather than descriptive since laws instruct us how we ought to behave rather than report on how we already behave. Since laws are intended to guide future behaviors, laws are not to be viewed as

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<sup>1</sup> Damiano Canale and Giovanni Tuzet, "On Legal Inferentialism. Toward a Pragmatics of Semantic Content in Legal Interpretation?" *Ratio Juris* 20 (2007): 37.

<sup>2</sup> Luke William Hunt, "What the Epistemic Account of Vagueness Means for Legal Interpretation," *Law and Philosophy: An International Journal for Jurisprudence and Legal Philosophy*. 35 (2016): 39.

entirely true or false. Instead, a law is viewed as whether or not it reflects the values of the society it governs.

A law reflects its society by preserving values considered important to the society's composition. The values are characteristic of a society because these values convey the desires of a society. For example, a societal value is respect. As citizens, we desire to be respected as members of our community. This means that we seek to be treated fairly without fear of our rights being violated. Rather than write a general law about respect, laws require citizens to respect one another by respecting the right to property. The US Constitution protects the right to property in the 14<sup>th</sup> Amendment by stating "nor shall any State deprive any person of life, liberty, or property, without due process of law."<sup>3</sup> This law does not list the ways in which a citizen's right to property can be disrespected nor does the law specify how to respect the right to property. Instead, the law offers a claim stating that the right to property ought to be respected. Despite its lack of specificity, the law achieves preserving the value of respect by communicating that all citizens have a right to property. How do we know what values a society desires to be preserved? To answer this question, we look to social norms.

Social norms are informal, collective behaviors members of a society perform. These collective behaviors form from our experiences in society. As a community at large, we interact with one another through religion, ethics, philosophy, and culture.<sup>4</sup> During these interactions, similar behaviors emerge. These behaviors reflect values members of a society identify as important. As we interact, we come to a mutual consensus on how we should treat one another. These explicit and implicit agreements form habits which develop over time and expand to become social norms. As these norms continue to be practiced, they become more comprehensive as related behaviors are grouped with the main norm. This development of a norm gives

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<sup>3</sup> "The 14th Amendment of the U.S. Constitution," National Constitution Center - The 14th Amendment of the U.S. Constitution, accessed April 12, 2021, <https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiv>.

<sup>4</sup> Halina Sierocka, "Cultural Dimensions of Legal Discourse," *Studies in Logic, Grammar, & Rhetoric*. 38 (2014): 189.

prominence to desired behaviors of a society; norms communicate values that are characteristic of a society. Social norms identify what values a society desires for the law to preserve. By using social norms when we interpret the law, we put the law in a context that narrows the ambiguous nature of the law so we can determine how the law reflects the values of a society.

Determining whether or not the law reflects the society it governs requires us to interpret the vague wording of law. Written laws are ambiguous because they read as normative statements. Since laws serve as reminders for how citizens ought to behave, laws are crafted to promote values of a society without dictating exactly how these values should be practiced. To uncover these values in certain situations, social norms provide the necessary context to interpret and apply laws. An example utilized in the philosophy of language which illustrates how context impacts the interpretation of text are analytic statements.

Consider the following statement:

All bachelors are unmarried.<sup>5</sup>

Analytic statements are statements whose meaning is revealed by the meaning of the individual words in a statement.<sup>6</sup> We can comprehend this statement because in the context of this statement, “bachelors” refers to unmarried men. Therefore, the statement could read as “All unmarried men are unmarried.” Analytic statements illustrate how interpretation relies upon the context of words. The statement regarding bachelors makes sense due to the meaning of the words “bachelor” and “unmarried.” We know the meaning of these words due to the social norm that a bachelor is an unmarried man. In a society which does not recognize suitors as “bachelors,” the statement, “All bachelors are unmarried” does not make sense. The statement does not reflect social norms, meaning the statement is out of context for that society. For the purposes of this essay, we can compare written laws to analytic statements. Interpreting analytic statements introduces the role social norms have in interpreting written laws. To interpret laws, we have to understand what each word in a statement constitutes by using

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<sup>5</sup> Georges Rey, “The Analytic/Synthetic Distinction,” Stanford Encyclopedia of Philosophy, Stanford University, last modified October 12, 2017, <https://plato.stanford.edu/entries/analytic-synthetic/>.

<sup>6</sup> Rey, “The Analytic/Synthetic Distinction.”

the context created from the social norms of the society to which we are applying the law.

In the vehicle example at the beginning of this essay, the law does not specify what a vehicle is, so the term "vehicle" is open to interpretation. To interpret the law about vehicles in the park, we ought to understand what constitutes a "park" as well as what constitutes a "vehicle." By defining these terms, we can understand the context of why the law exists. To define "vehicle" and "park," we apply social norms to give the law context. For instance, the law could refer to the fact that parks are locations people go for leisurely activities. If we use this context, we interpret that the law is intended to assist people in continuing these activities. To assist people, the law's purpose is to protect pedestrians in the park. This purpose leads us to define vehicles as any moving mode of transportation that is hazardous to a pedestrian. Vehicles are hazardous if they move faster than pedestrians. This means that both motorized vehicles and bicycles constitute a vehicle in this interpretation of the law. We can conclude that neither motorized vehicles nor bicycles can enter the park. By analyzing this law with social norms, we identified a possible reason as to why the law exists. This purpose gave the law context which allowed us to interpret the vague wording of the law.

Interpreting a law within a context provides supplementary information that would not be obvious upon the first reading of a law. This additional information helps constitute what each word of a written law means. These definitions cannot be gathered solely from the text since we rely upon the context from our social norms to guide how we interpret a law. By grounding legal interpretation in social norms, the ambiguous nature of law is constrained: Without using social norms to interpret legal language, we lack a set of conditions which force us to pinpoint how a law applies to a specific event or instance. Social norms are important to interpreting legal language because these norms narrow the ambiguity present in written law by providing a context through which we interpret these laws. This context ensures a law's application reflects the values of a society. To illustrate how the constraint of social norms guides legal interpretation in a manner which allows us to apply the law to our daily lives, we can look to Ludwig Wittgenstein's explanation of language games.

Wittgenstein supports the notion that the context through which we interpret language is connected to our social norms. He views language

as a social activity which he coins as language games.<sup>7</sup> Language games rely upon the view that language is an activity that is part of “a form of life.”<sup>8</sup> Since humans are social beings, any time we interact with another human being, we are participating in a game. Our social norms influence how to play the game since norms inform us of the context in which a dialogue takes place. By understanding the dialogue, we are then introduced to the guidelines of a conversation as certain words and phrases cue our responses throughout the conversation. Games have an objective that participants strive to achieve. Rules guide participants towards this objective.

Perhaps the most important notion of games as it relates to the interpretation of language is that one understands a game through involvement with the game. The more we experience and play a game, the more we become familiar with the rules and objectives of the game. Likewise, the more we play a game, we become aware of how to use the rules to aid us in reaching the game’s objective. While the objective and fundamental features of the game do not change, how we make sense of the rules does change. Consider the difference between a child competing in a recreational basketball league and a collegiate basketball player: For the child, the game is something new. The child is unfamiliar with the rules of the game since the player has little exposure to playing the game. The college athlete is very familiar with the game and is well-versed in the rules of the games. For the child and the college athlete, the game of basketball is the same. The objective is to score points for your team while using permitted moves and avoiding prohibited moves. What differs between these two players then is how they use these rules to aid in their performance. While the child is still learning about teamwork, the college athlete can execute plays which set a teammate up for a shot. Having spent more time playing basketball than the child, the college athlete is aware of both the rules of the game and the role of each teammate. The college athlete plays the same game as the child but executes the game with a different level of awareness due to having more exposure to the game. When we become more familiar with a game, we are able to arrive at a game’s

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<sup>7</sup> Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe, P. M. S. Hacker, and Joachim Schulte. (4<sup>th</sup> ed. Wiley-Blackwell, 2009), Remark #7.

<sup>8</sup> Wittgenstein, *Philosophical Investigations*, Remark #23.

objective in a new manner. This is because we use the rules to our advantage rather than merely blindly following or abiding by the rules. Being familiar with the rules of the game leads us to learning more about the game: we understand the purpose of the game and how the rules are meant to help us achieve this overarching goal.

Much like how increased exposure to a game results in a stronger awareness of how to play the game, the more we experience a law the more we understand the law. Social norms facilitate this experience since social norms are embedded in the law: social norms lead to the creation of laws as well as help guide how we apply a law. Driving is an example of a social norm turned law that illustrates how continuous experience increases our understanding of that law. In suburban towns, using a car as the main mode of transportation is a social norm. We anticipate using this mode of transportation and become familiar with what it means to obey streetlights as we observe someone else drive. In this sense, by observing someone else drive, we are first introduced to the norms of driving without having first-hand experience of performing these norms. Once we become old enough to drive, these prior experiences influence how we behave as drivers on the road. When first learning to drive, we are taught the laws of the road. Most of these laws are already second-hand nature: you stop at stop signs, drive on the right side of the road, yield to pedestrians, and proceed when the traffic light turns green. However, other laws are foreign: the various kinds of painted lines dictate when it is safe to pass another vehicle when driving on a two-lane versus a six-lane highway and you should pass cars from the left side of the vehicle. The more we drive, the more we are exposed to new, unfamiliar situations. As we become more experienced, we interact with complex laws. Since we are more experienced, we are able to understand how these laws relate to other desired behaviors driving laws require of us. Interacting with written laws in a visual manner allows us to verify a law's relevance to society.

The idea of interacting with the law is important for understanding how we interpret legal language because interacting with the law gives written law a physical presence. This physical presence is important because it makes the law something we can visually see and with which we gain experience rather than viewing a law as just words on a page. Once a law correlates to a physical action, society can engage with the law. Jacques Derrida argues that there are external forces present which

permit law to exist beyond words on a page.<sup>9</sup> These external forces come from social norms since these norms correlate actions with written laws. Actions make laws visible and something with which we can interact. For instance, laws prohibiting jaywalking aims to protect pedestrians from harm. Despite this law's existence and it being enforced, we engage in this practice because we do not comprehend the ramifications for violating this law. It is when we experience the need for the law prohibiting jaywalking, whether firsthand or secondhand, that the relevance of a law is clear. It is easier to disregard something in writing rather than if it is something with which we physically interact; if a law is to remain relevant in society, then the law should be embedded in our day to day experiences. We do not read the law in our daily life, but we do engage with social norms. For laws to be manifested in social norms means we interact with the law in our daily life. The more we interact with the law, the more we are aware of the purpose a law serves in society. This awareness helps us continue to gain experience with the law, growing our understanding of the law. Without experience, the law remains written language rather than be seen as something with which we interact on a day to day basis through social norms. Social norms are what establish a connection between law and society. By using social norms to interpret the law, we narrow the ambiguity of written laws.

It is important to note that the use of social norms is not intended to eliminate the ambiguity of legal language. Ambiguity is what allows laws to remain normative. Laws are normative since laws aim to encourage our future behaviors by dictating what actions a society deems desirable. The vague nature of legal language keeps laws normative, allowing laws to be interpreted for many situations. Social norms narrow this ambiguity to ensure that when a law is applied to a situation, the law reflects society's values. If social norms allow for laws to be interpreted in a manner that keeps laws relevant to society, then what would it mean to interpret a law without reference to social norms?

A law interpreted without reference to social norms is more extreme than a normative approach since the law would dictate

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<sup>9</sup> Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" in *Deconstruction and the Possibility of Justice*, (New York: Routledge, 1992), 31.

precisely how we should behave rather than provide general indications for how we ought to behave. One could argue that more constraints for interpreting legal language is desirable if this would lead to a consistent, predetermined application of a law. If you could follow rules in a manner that resulted in you winning a game every time you played, you would never lose. A game you could never lose sounds appealing: what if you could win the lottery every time you played? While this guaranteed outcome appears desirable, a fully constrained interpretation of law cannot account for changes in social norms. Without adapting to these changes, a law no longer reflects a society. This means that a law risks becoming outdated and no longer relevant to a society. To further understand why legal interpretation without reference to social norms is problematic, I will examine and critique the notions of predictability and calculability.

In theory, a predictable legal system seems preferred; a consistent outcome eliminates the risk of certain rights being violated. Furthermore, a consistent outcome ensures that all individuals are treated the same. There would be no deliberation necessary to convict criminals of crimes. The input of the quantifiable crime would produce an equally quantifiable punishment. While this punishment would create consistency across the same types of cases, it would prevent other types of remedies: how can justice be determined by a quantifiable calculation? What one person considers a fair punishment another person does not. To quantify a just outcome eliminates the human aspect of legal interpretation. In other words, the qualitative features that make us human cannot be converted into a quantifiable measure without disregarding the features that make us social creatures.

For example, what would happen if we relied upon a machine to provide an output for what to wear? Rather than allow our personal thoughts and judgements to decide our outfit, the machine would factor in variables such as the temperature and season without taking in to account our judgements towards an outfit. The qualitative feelings we have towards how we look becomes disregarded as an outfit becomes a result of calculation. Humans are rational beings capable of reason; we make our own choices due to our emotions as well as social influences. This suggests that we live life by reasoning through qualitative experiences. By favoring complete predictability of the law, we ignore how social norms influence the interpretation of laws. This error suggests that the law can be interpreted without social norms, but we know this is false: the law cannot be separated from social norms. This

separation would result in a law that no longer reflects its society. If a law no longer reflects its society, it becomes unclear how a law ought to apply to the society. The predictability and consistency of an outcome for violating a law creates uniformity in a law's application. This application eliminates the perceived relevance of a law to a society by reducing the interpretation of legal language to mere calculation.

A calculated interpretation of a law means the law has predetermined outcomes. For laws to have predetermined outcomes suggests that laws can be applied to a version of a society that does not yet exist. Since the law is shaped by our social norms, we cannot predetermine outcomes related to future social changes because the future social norms for the predetermined outcome to relate to are nonexistent. The law would no longer rely upon social norms, disconnecting the law from a society. The goal of laws is to protect our rights by preserving values deemed important to a society's cultural composition. If the law becomes separated from our values, laws lose their ambiguous nature by reading as having specified, predetermined applications. Calculability overcorrects the ambiguity of laws and as a result, eliminates the influence of social norms. Ambiguity is important to law because it reflects that as human beings, we constantly adapt and change our social norms as we interact with one another and the world around us. The ambiguous composition of laws is what allows laws to apply to multiple scenarios in society as well as respond to changes in society. By having a larger scope of application and the flexibility to adapt to social changes, laws remain relevant over time.

The law cannot be disconnected from social norms since this would make law predictable and calculative. By omitting the way social norms influence legal interpretation, we eliminate the vague nature of law in an attempt to reach consistent and predetermined applications of the law. While consistent and predetermined applications are appealing, these applications limit the number of situations to which a law applies; specific inputs can only produce a predetermined number of outcomes. Much like inserting a dollar bill into a vending machine, limiting how a law can apply to a society reduces the possibilities for how a law reflects the interests and values of a society. Laws should be flexible in their application rather than specified to apply to a limited scope. This flexibility allows social norms to remain at the forefront of legal interpretation. Rather than be focused on the outcome of a law's application, social norms communicate what values a law should preserve. This preservation is what allows written law to remain

relevant over time since laws can adapt to reflect changes in a society and laws are not applied to a limited scope of instances.

Jacques Derrida accredits the ability of written documents to be interpreted over time due to documents being composed of signs. According to Derrida, the meaning of the text drifts over time because the signs which compose a document preserve the text's meaning.<sup>10</sup> As the text is interpreted, the signs reveal the text's meaning.<sup>11</sup> Thinking back to our "All bachelors are unmarried" example, "bachelors" analyzed next to "unmarried" reveals the meaning of the statement to be "All unmarried men are unmarried." This meaning can be drawn from the statement over time because the signs will always carry this meaning. For a meaning to drift over time relates to the idea that a society's values do not change significantly over time; what a society values becomes the foundation of its culture. Similar to our earlier discussion of games, the objective of a game remains the same even if the rules for how to arrive at this objective change. Meaning drifts over time but never changes completely because the underlying values a statement conveys do not change significantly when the statement's interpretation varies over time. When social norms change, these norms still relate to the cultural value a society upholds. This connection with social context allows laws to remain relevant to a society over time. As a law is applied to various situations, the value the law preserves remains attached. Even when social norms change the context in which the law is being applied, the value anchors the law to reflect the desired behaviors and expectations of a society. The United States Constitution is an example of a legal document whose meaning drifts over time.

The US Constitution is an evolving document since it adapts to changes in a society. This legal text is interpreted to ensure that fundamental rights of citizens are protected. An example of text in the US Constitution that raised debates regarding legal interpretation is the 14<sup>th</sup> Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

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<sup>10</sup> Jacques Derrida, "Signature, Event, Context," (1972): 3.

<sup>11</sup> Michel Rosenfeld, "Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism," in *Deconstruction and the Possibility of Justice*, (New York: Routledge, 1992), 157.

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>12</sup>

Interpretations of the 14th Amendment raised debates about what it means to be a citizen in the United States. This law defines “citizen” as someone born or naturalized in the United States. The law continues on to suggest that all citizens have the right to the privileges which come from being a citizen. However, similar to the “vehicle” example discussed in the beginning of this essay, what constitutes “privileges” is loosely defined. What kinds of privileges belong to citizens? Since the law defines what it means to be a citizen but is vague about what privileges citizens are entitled to, this law allows for debates to determine what specific rights the 14<sup>th</sup> Amendment protects. Historically, this amendment was utilized to defend the claim that the right to vote should be offered to all citizens, regardless of race or gender. Voting was considered one of the privileges citizens are entitled to since voting is how citizens participate in the democracy. Interpreting the 14<sup>th</sup> Amendment to consider voting a privilege of US citizens led to the addition of the 15<sup>th</sup> and 26<sup>th</sup> Amendments.

As amendments have been added to reflect changes in society, the original written text of the US Constitution remains intact. Instead of erasing existing laws, these rights are amended as changes in social norms clarify how to interpret the laws. These adaptations ensure the relationship between social influences and the law is maintained. In relation to games, changing or adding a rule does not change the overall objective of the game. Adopting the 15<sup>th</sup> and 26<sup>th</sup> Amendments did not call for the entire US Constitution to be rewritten nor did these additional amendments create a new system of government. Instead, these amendments kept the right to vote but increased who was eligible to engage in this practice. This example of altering legislation illustrates the importance of interpreting legal text with social norms: if the application and interpretation of laws does not reflect present-day society, then citizens are left unrepresented and unprotected. As society changes its norms to support existing values, laws too should reflect these changes to keep the relationship between social norms and the law active.

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<sup>12</sup> “The 14th Amendment of the U.S. Constitution.”

Without the addition of the 15<sup>th</sup> and 26<sup>th</sup> Amendments, the 14<sup>th</sup> Amendment in the US Constitution fails to reflect social norms of modern-day America. Participating in the democracy is a key value identified by society. Therefore, denying citizens this right does not uphold this value. At the time the Constitution was drafted, social norms did not communicate a desire for African Americans nor women to have the right to vote. The 14<sup>th</sup> Amendment did not specify voting as a privilege granted to all citizens, which allowed for African Americans and women to be refused the right to vote. The addition of the 15<sup>th</sup> and 26<sup>th</sup> amendments clarified what privileges are associated with being a citizen and called for an update to the law to ensure that society's desires be reflected. The addition of these amendments relates to Derrida's concept of drift because the addition of these amendments did not cause the law to stray from the value of citizens participating in the democracy. These amendments sought to clarify what the 14<sup>th</sup> Amendment meant rather than uproot the law altogether. It is apparent that our society has evolved over time since the right to vote now extends to African Americans and women. The Constitution now grants more citizens the ability to participate in the democracy by identifying voting as a privilege granted to citizens. This accomplishment would not have been achieved if the law was viewed independently of social norms because the use of social norms in the interpretation of laws ensures cultural values are reflected in the law's application. These norms being reflected in the application of a law illustrates how the use of social norms in the interpretation of legal language keeps laws relevant to a society over time.

Laws are normative statements. By communicating how a society ought to function, laws capture the values of society in an ambiguous, written form. Social norms narrow the ambiguity by providing a social context through which to interpret the law. Interpreting legal language cannot be separated from social norms. If one chooses to separate law from societal values, the law is at risk of being disregarded since the social norms are no longer reflected in the law's application. Laws have social significance since laws preserve values important to a society's cultural composition. Preserving these values enables laws to remain relevant to a society over time since these values give laws prominence in a society.

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