PERSPECTIVES

The Spirit of the Law

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Keywords: law, constitution, history

Critical Debates in Humanities, Science and Global Justice

Vol. 2, Issue 1, 2024

This paper evaluates the phrase "the spirit of the law" and its meaning. The research further investigates the creation of fundamental laws, providing robust information on the "why" behind the laws. Through a review of existing and the development of new perspectives, the research analyzes the disparity between the "spirit of the law" and "the letter of the law," offering insight into their differences. The findings of this research will apply to more than just the U.S. legal system but also to all rules, whether they are promulgated by a government or in a board game, finding helpful insight into the motivation behind the law. The study could bring change in rulings by both judge and jury by providing a more complex and nuanced understanding of the infrastructure of the legal system and the perspectives surrounding it.

Introduction

Throughout history, from the very first laws ever written to the Bible through laws made in the present day, the interpretation of laws has been debated. These disagreements are often regarding the intention behind the laws.

There are two components of laws: the "letter" and the "spirit". The letter of the law is "exactly what the law says," where no assumptions are made, and nothing is done past what is explicitly written (Merriam-Webster, n.d.). The spirit of the law, however, is where the debate arises due to its equivocal nature; the spirit of the law is defined as "the aim or purpose of a law when it was written", although some argue on the point of "when it was written" (Merriam-Webster, n.d.). The spirit of the law is often variable, but it acts as the intent behind the law, information that can only be assumed or argued rather than definitively stated. An example concerns laws related to speeding–if someone goes one mile per hour (mph) above the speed limit, that violates the letter of the law,. However, many would call it unfair to enforce the law explicitly, so many would say that speeding does not violate the spirit; some may argue that the one mph is an infraction (Gordon & Garcia, 2011).

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Understanding different perspectives is advantageous when interpreting controversial issues to obtain the greatest possible outcome. Moreover, the varying number of cases submitted to trial among numerous categories adds more reason to understand the perspectives surrounding laws and how they are expounded (Federal Judicial Caseload Statistics 2022 | United States Courts (2022), U.S. Courts of Appeals section).

By analyzing multiple pieces of literature, this study identifies different perspectives on the law, focusing on the spirit of the law. It emphasizes the importance of the spirit of the law and discusses the effects and differences of varying perspectives.

Constitutional Law

The Constitution has been debated concerning the spirit of the law since its very creation. Soon after its ratification, many debated the interpretations and conclusions that could be drawn from the document beyond what is explicitly denoted. Originalism is one of the primary ways of viewing the Constitution. Originalists believe "that the Constitution's text had an 'objectively identifiable' or public meaning at the time of the Founding that has not changed over time, and the task of judges and Justices (and other responsible interpreters) is to reconstruct this original meaning" (*Modes of Constitutional Interpretation*, 2018, para. 3). Alternatively, there is a looser interpretation allowing the perspective of the elastic clause–a clause in the constitution denoting Congress has "the power to pass all laws necessary and proper for carrying out the enumerated list of powers" (U.S. Const. art. I, § 8, cl. 18)–should allow Congress to create any laws they want as long as it benefits the nation and thus reinforces the country's ability to protect the "list of powers," or rights.

The elastic clause was one of the first significant disputes over perspectives regarding the Constitution and can serve as a great example of division in viewpoints. The "Constitution specifically allows Congress to collect taxes but does not mention the creation of a National Bank"; Hamilton argued the enumerated powers to tax encompassed the power for a national bank by proxy, while Jefferson and Madison argued that the bank was not in the government's rights (Lindemann, 2022). Hamilton displayed a looser perspective compared to Jefferson and Madison's originalist perspective; Hamilton drew conclusions and assumptions while Jefferson and Madison argued against anything other than what was explicitly written. The bank did pass and was chartered; however, it was later brought to the purview of the Supreme Court in the case McCulloch v. Maryland. In this case, the Supreme Court unanimously held that the government could charter a national bank. Chief Justice Marshall redefined "necessary" in the elastic clause to mean "appropriate and legitimate" (*McCulloch v. Maryland*, n.d.); while the law did not change in writing, the meaning did and used the spirit of the law, which was to give the federal government power to improve the nation, to alter the meaning. This is essentially a debate over the spirit of the law, with

Hamilton arguing the spirit of the law does not align with the letter of the law. In contrast, Jefferson and Madison argue the spirit of the law does align with the letter of the law.

Over time, new ways to understand the Constitution that people argue over. Randy E. Barnett and Evan D. Bernick both wrote on just a few methods of interpreting the Constitution. Originalism still exists, but various other viewpoints have arisen, "New Originalism contend[s] that the meaning of the constitutional text was fixed by the communicative content that it conveyed to the general public at the time of ratification," primarily changing the application of the letter of the law to just the concepts it would have been applied towards at it ratification. (Barnett, & Evan, 2018, p.4). There are innumerable alternative perspectives, but these detail the ongoing debate over the interpretation. Yet another example of interpretations is originalist, a viewpoint where scholars focus "on the plain meaning of the text of a legal document " and that there is no flexibility in their given interpretations (*Modes of Constitution Interpretation: Textualism | Constitution Annotated | Congress.Gov | Library of Congress*, n.d., para. 1).

To many, originalism may sound harsh, but it has some benefits. While there may not be as many changes to fit the varying culture of the country due to the unchanging state it stays in, the perpetuity of the legal system itself has several advantages. A paper from the University of Missouri–Kansas City details how originalism "in the long run better preserves the authority of the Court." Additionally, it includes how original meaning is not lost if it is never left and such a notion forces the U.S. to treat the Constitution as it would remain the most prevalent piece of legal writing.

These different interpretations are important to know because it is essential to recognize the meaning of the law and recognize the law is flexible, even in the most fundamental portions of the legal system. The country would be vastly different, following a philosophy of strict originalism. Near the Constitution's creation, "The central government was designed to be very, very weak" (*10 Reasons Why America's First Constitution Failed - National Constitution Center*, 2022), but the rights given by the Constitution were expanded, and the government grew. Thus, following a strict originalist perspective, the U.S. would not be a unified federal entity but a nation of separate states as it started with. With Originalism implemented, "The federal prison system and criminal law would be in serious question, and forget the Federal Reserve. It would be gone", and the nation would be significantly altered (Rosen, 2011, para. 22). The country "could impose the death penalty on anyone — including juveniles," an act that would appear horrific to most (Rosen, 2011, para. 7). Following a system of very strict interpretation, crimes like fraud would not be illegal technically–those fall under the 1st Amendment. There is constant debate about what is considered fraud because it is a grey area in the rights of the 1st Amendment (*False Speech and the First Amendment: Constitutional Limits on Regulating Misinformation*, 2022). Using a textualist perspective, courts can rule on

fraud cases by regarding the spirit of the Constitution itself at its creation, which is to protect the nation's citizens and allow crimes (e.g., fraud, defamation, hate speech, cyberbullying) to be illegal. However, the tension between the 1st Amendment and the law would be higher due to their inherent conflict.

The *United States v. Kirby* case shows how important it is to understand the spirit of the law. In this case, a Gallatin County, Kentucky, sheriff was tasked with arresting a man indicted for murder. This man, Farris, happened to be a mail carrier and was delivering mail at the time of the arrest. A grand jury then indicted the sheriff of the area. After an appeal to the Circuit Court of Kentucky, Kirby, the sheriff, was heard by the Supreme Court of the United States of America. He was charged with obstructing the mail because, under the letter of the law, he was preventing mail distribution by arresting the mailman. The sheriff technically violated federal law, yet he was ruled innocent, and the precedent of "sensible construction" of laws was set. This precedent denoted "absurd consequence" will not be applied to someone who can be rationally ruled free of culpability (*United States v. Kirby, Volume 74, U.S. Page 482*, 1868). Essentially, people will not face the consequences when placed in situations where they can be rationally ruled to be free of guilt; the purpose of the law is to punish those with ill intent. To many, this may appear clear: the sheriff is innocent and should be acquitted; this assumption of innocence indicates the common perspective of how many are inclined to extend past the letter of the law and utilize the spirit of the law due to their notion of common sense. Yet, these "common sense" assumptions about the innocence of the sheriff are liberal perspectives on the law. The sheriff directly violates federal law by stopping the mail; the law states anyone who stops the mail is committing a crime. Believing he is innocent would be assuming the spirit of the law was to stop anybody acting in bad faith. This case serves as a basic example of why considering different perspectives is important; in an interpretation that follows the letter strictly, the sheriff would have been imprisoned, but with a looser perspective, he is not. This scenario is much simpler than in many other cases, but it still represents how important different perspectives are.

Montesquieu's Laws

Baron de Montesquieu was a philosopher whose concepts, such as the division of powers with checks and balances, were essential in creating the Constitution. Yet, even he considered the evolution of law to be something inevitable. By observing the transformation in the Roman and German Law systems, he understood the law could not encompass all it would need to be in the future. Montesquieu's perspective was that the law should adapt and alter accordingly to instances that require more than what is specified in the letter. For instance, he identified that the laws of many other nations, at the time he was writing, were "derived" from early Roman law, noting that when the law was unclear in meaning, it was expanded upon to fit it. He specifically detailed Roman inheritance laws where the spirit of such laws

was to keep the assets provided to the next eligible heir that would keep the property in the family; however, the letter denoted that the property would just go to the next heir. Originally, these laws would occasionally give the inherited assets to a daughter (if they were the oldest and had no extenuating circumstances preventing them from obtaining the assets). Still, in Roman culture, daughters were married out, ergo the assets were carried out, thus removing them from the family. So the law was not assumed but changed to specify that the eldest who would keep the property in the family would receive the inheritance. He would then explain in his treatise how many other nations would adopt these laws and utilize and build on them to fit their own society. These changes can occur because while the actual letter of the law may change, their interpretation of the original purpose and spirit remains.

The concept displayed where laws are "derived" is a parallel to how U.S. laws evolve over time. Precedents are an important part of the legal system, and referring to them causes them to change over time. For example, the decision of Roe v. Wade in 1973 set a precedent that most judges followed (until it was overturned) when ruling on abortion: that abortion was legal. In McCulloch v. Maryland, the powers of Congress were expanded via the case's decision; over time the government has clearly gained more power. The precedent to allow the concepts in Montesquieu's treatise display a way to create laws that, served as common sense to him believing the government should create a law and when the time comes to make a decision not directly encompassed in the wording of the law, have the judge make a decision, and make it so that decision is the law (similar to how we have precedent, but instead of it being expected its forced). That concept was common sense to Montesquieu, someone the United States has held in high regard.

Another viewpoint Montesquieu had was specifically about the changing of laws. He described Germanic laws where "[the law's] character considerably altered from the great change which happened in the character of those people after they had settled in their new habitations."(Montesquieu, 1748/2001, p. 536). Montesquieu would then go on to describe his approval of such a legal system since his beliefs benefitted the individual peoples far more than a unified form of law (Montesquieu, 1748/2001, pp. 523–622). What Montesquieu hints at is a local decision-making process, where precedent is not considered, but local culture is. For example, if a city made a ruling on how laws should be interpreted instead of by the Supreme Court, it would make people happier. Another example of local-based law is voting; Montesquieu wrote that "When the nobility are numerous, there must be a senate to regulate the affairs which the body of the nobles are incapable of deciding" (1748/2001, p. 29); however when there are fewer people to vote by the senate would be unnecessary and a direct voting system would be sufficient. His overall claim is simply one different way to interpret the law that is more focused on local satisfaction with the legal system. While it may have flaws, it is a perspective that has its own benefits as well and thus is worthy of consideration.

Modern Interpretations of The Spirit of The Law

On the other hand, a more recent viewpoint can be identified within Matthew T. Gordon's work. Gordon describes the common, contemporary perspective on the law, conducting several studies to identify what people would consider the spirit of the law. Gordon's paper contrasts with Montesquieu's in that instead of commenting on how the law should change, Gordon analyzes people's varying perspectives on what the intent of the law is. One of the experiments he performed asked a group of 100 University of Michigan undergraduates and alumni questions and recorded their perception of "fairness". Gordon's study asks the participants to rate how fair it was (on a scale of 1-10) that they received a ticket in the provided context. The experiment always states that a random person is traveling in a 60 mph speed zone and that they are speeding, at speeds varying from 65 mph to 85 mph. As the quantity of speed the participants exceeded the speed limit, so did the level of fairness perceived. In a second experiment, the researcher asked people in a scenario in which someone was ticketed for speeding in an area (also at speeds varying from 65 mph to 85 mph) where other people were: often ticketed while speeding, not ticketed while speeding, or were not given data about other people. These studies found that "In the everybody ticketed condition, the observed means of happiness ratings increased as the speed interval increased" and, "For the nobody ticketed condition, the observed means of happiness ratings decreased as the speed interval increased" (Gordon & Garcia, 2011, p. 20).The purpose of such findings were to compare people's views on the intent of the law in different scenarios, and the results contrast in several ways: both articles identify that people are often happier when the laws are tailored to their locale rather than broad and non-specific. However, the papers contrast greatly when they identified that the participants in Gordon's study show variability, and some interpret the law differently in similar contexts.

Comparison: Old and New

Both authors have valid points to make in this regard: Montesquieu's system creates a consistent system that everyone may not be happy with by making decisions into laws rather than making a unique decision every time a case comes up. Gordon's system allows variable rulings that could potentially allow everyone to be happy. However, Gordon's system is not perfect: people hold biases. When questions were posed if the participant themself was in the situation, the subjects' average perception of fairness of the law increased, thus indicating a bias towards themselves (2011, pp. 23–25). Each has its own benefits and disadvantages, and the previously provided evidence displays each system. The spirit of the law allows bias to be applied which can make decisions unfair and result in greater unhappiness than in Montesquieu's inflexible system.

A term that describes an essential aspect in Montesquieu's system and the present day system is: stare decisis. Stare decisis is a concept that litigation will proceed according to precedent, meaning that what has happened before will happen again. Montesqueiu's system follows that directly, with laws being unwavering and strictly following precedent. Despite being vastly different, the modern system described in Gordon's research still has this, but prefers a looser use of precedent in the law.

Common Sense Law

It might be easy to use common sense, but it has several shortcomings, for example, between Montesquieu and Gordon's papers, the concept that common sense changes over time can be seen. Each shows what people think about the law, and what is a reasonable expectation of it. But even if it changes, common sense is still flawed. In Montesquieu's system, he wrote that laws can be altered to fit a civilization, yet he also wrote that rulings should become laws ensuring consistency. Using the argument that time can be a part of how the law should be ruled would make difficult-to-change laws permanent and not befit the time. Just using common sense would be left, and since common sense is a notion used by people and not law, the issues arise in the people ruling.

The primary issue with common sense rulings, dubbed commonsense justice, is in the people; people have bias whether they know it or not. Although people can be trained to recognize their own bias, a version of bias is Naive Realism, where people believe that their "views are objective whereas others' are biased" (López-Rodríguez et al., 2021), a jury or even a judge would be influenced by their own "political and moral convictions" (Garcia et al., 2014) when ruling. Without using precedent as objective footholds in court, rulings could be vastly different just because the ruling party unknowingly judges them and holds implicit bias.

Conclusion

While the paper has focused on the spirit of the law and identified its importance, it would be remiss not to write about the importance of the letter of the law. Understanding the meanings and purpose behind the law is critical and can serve countless people, but without a strict and enforced basis for extensions of meaning, the law would have a bias that many deem unfair. It is vital to understand the dichotomy of the two. At the same time, they may work independently; most legal systems of the Western world imply the effectiveness of using both simultaneously to get as close as possible to complete fairness. While the study observed a few perspectives, there are countless more. This paper has shown the merit of considering as many sides as possible to achieve a better legal system of law.

Published: December 14, 2023 EDT.

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