

An Analysis of Judicial Socialization through Network Theory

By

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A THESIS


**Presented in the Department of Political Science
and the Robert D. Clark Honors College
in partial fulfillment of the requirements for the degree of
Bachelor of Arts**

June 2016

An Abstract of the Thesis of

Rachel Gimre Wolfard for the degree of Bachelor of Arts
in the Department of Political Science to be taken June 2016

Title: An Analysis of Judicial Socialization Through Network Theory

Approved: 
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There are two emerging theories that model the exercise of political power in the field of political science. The application of each stand in complete opposition to one another, which signifies that only one of the two models may be applied in a single study. The disciplinary model of power is a more appropriate political power theory than the dimensional model to locate and evaluate the exercise of power within the United States legal system, assuming the judiciary intends to fulfill its Constitutionally prescribed role to interpret and declare the law without corruption. The disciplinary model of power is adapted in this thesis to focus on the exercise of power between individuals throughout the judicial network and how that exercise of power can yield a large-scale socialization effect. This analysis is performed through the application of network theory in order to investigate how the structure of the judicial system permits the exercise of disciplinary power. The exercise of disciplinary power within the judicial network leads to the interpretation and declaration of law. This jurisprudence influences how citizens internalize the information that dictates subconscious decision-making and action, which can be defined as socialization.

Acknowledgements

I would like to take this opportunity to thank my primary advisor, Professor Deborah Baumgold, my secondary reader, Professor John Davidson, and my Clark Honors College representative, Professor Kelly Sutherland.

This thesis developed out of a paper written for Professor Baumgold's Political Power Theory course and further expanded upon in a final paper for Professor Davidson's Constitutional Law class. They have assisted me tremendously in the process of directing this thesis in an appropriate direction that is innovative, yet grounded in political power and Constitutional theory.

I would also like to thank Professor Sutherland for offering directions on how to fulfill all the necessary requirements to put together a strong thesis in accordance to the guidelines prescribed by the Robert D. Clark Honors College.

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Chapter 1: Introduction

The Founding Fathers of the United States of America outline three branches of government in the Constitution: the legislature, the executive, and the judiciary. They hoped that separating powers amongst distinct governing bodies would provide checks and balances between each. The ability of one branch to check another is often challenged by the question: is power separated sufficiently for one branch to effectively and efficiently check and balance the actions of another? However, this question has evolved tremendously since the time of the Founding Fathers, along with the expansion of political power theory.

As political power theory progresses in the field of political science, it becomes evident that power cannot be accepted as a singularly and universally applicable term. This is because power has suffered extensive misuse and is applied too liberally, far too often, without specification as to what type or study of power is being referred to when utilized. The term “power” is often misused in place of words such as authority, control, coercion, manipulation, etc. because the study of power is often omitted when the term is implemented. The abusive nature in which power is often implemented yields a concept that is difficult to apply to a single institution or organization in order to deconstruct its function. Consequently, it becomes difficult to determine where power is located and how it is utilized in an organization when the term has a variety of uses and implications that are not specified. Furthermore, it becomes a strenuous task to determine how power is allocated amongst governing bodies when it is not used consistently in a study. This creates a problem for locating where power is located in the United States government, how it is distributed, and how the each branch wields the

potential to exercises that power. It is important to evaluate the use of power by the government because its exercise often yields a socialization effect that indirectly influences the private decision-making and action made by citizens. In order to investigate how the government assumes the power of socialization, it is imperative to elect a study of power and come upon a single, strong definition.

Common implementations and interpretations of the term “power” are effectively outlined by two of the leading political power theories in the field on political science: Steven Lukes’ dimensional model of power and Michael Foucault’s disciplinary model of power. Lukes claims that power can be explained in totality through his dimensional model. Lukes intends for each of the three dimensions of his model to explain where power is located and how it is utilized from one party *over* another by describing each quality that must be *present* for traceable amounts of power to exist.¹ In a similar yet unique manner, Foucault attempts to define where power is located and how it is exercised by describing what factors must be *absent* for power to be present and the general qualities that embody the essence of power.² Foucault’s conclusive interpretation of power stands in complete opposition to that of Lukes’, claiming that power exists *between* rather than *over* individuals. These diverging conclusions suggest that only one interpretation can correctly be applied to any single institution at a time. Therefore, only one political power theory can be implemented in this thesis for a thorough and consistent analysis that investigates where power is located and exercised within the United States government.

¹ Lukes, Steven. *Power: a radical view*. 2nd ed. New York: Palgrave Macmillan, 2005. Print.

² Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books.

In order to locate and evaluate the exercise of power within the government, a rationale must explain why a specific study of power is the appropriate model to perform this analysis. The disciplinary model of power is unique from the dimensional model because it cannot effectively locate and evaluate power that could fall under the definitions of coercion or manipulation because it is intended to evaluate the exercise of power *between* individuals when there is no conflict of objective interests. Conversely, the dimensional model can be implemented to locate and determine the function of power in coercive or manipulative institutions because the study of dimensional power is established on the foundation of conflict of interests between parties, which can lead to coercion or manipulation of those that wield power under the definition established by this model. The basic difference between the two studies of power is that the disciplinary model asserts that power is exercised as a relational *entity* that exists in social exchanges *between* individuals, while the dimensional model claims power is a relational *commodity* through which an individual has power *over* another. Disciplinary power is a more appropriate study to investigate power in the American government because democracies are, by definition, governance by the people, which suggests power is exercised *between* the governors and the governed rather than being exercised by the government *over* the people.

The study of disciplinary power suggests that power is exercised through social exchanges between individuals and groups, which provokes conformity of thought and action as a result of the establishment of shared cultural values, norms, and ideologies. The way in which disciplinary power functions reflects several aspects of socialization theory, which, similarly, explains how and why individuals in an organization act the

way they do in any given setting or scenario.³ The process of socialization can partly be explained through the disciplinary model of power because Foucault explains how the exercise of disciplinary power produces a socialization effect. When socialization theory and disciplinary power theory are combined and examined through network theory, the structure almost undeniably matches that of the American legal system. This is because network theory evaluates the transactions that take place between individuals in an organization and the consequences of those interactions. The model explains how information travels in social environments that yield conformity of thought and action.⁴ In other words, network theory has the ability to outline how individuals are socialized within any given context. Socialization theory and network theory can both be explained and exercised through aspects of the disciplinary model of power. The combination of an adapted definition of disciplinary power combined with socialization and network theory can help locate and explain the function of the exercise of power in the United States government.

The judiciary is a nearly perfect model to explain how citizens are socialized through networks that embody several aspects of the disciplinary model of power. This is because the judiciary is interdependent on the people to exercise disciplinary power, as defined in this thesis, to generate and perpetuate shifts in socialization through the judicial network to become reflected in the law through jurisdiction. Court cases that arise from the general public demanding changes in cultural values, norms, and ideologies, to be upheld by the law are the best case studies to evaluate the socialization

³ Clausen, John A. *Socialization and Society*, Boston: Little Brown and Company, 1968. Pg. 5.

⁴ Galaskiewicz, Joseph. *Exchange networks and community politics*. Sage Publications, 1979.

effect of jurisprudence. The most effective cases to perform this analysis are those that exist in familial or marital affairs because government influence in the private sphere is more explicitly evident than in the public realm. The 1965 Supreme Court case *Griswold v. Connecticut* demonstrates a past shift in socialization through a disciplinary network because the people were able to overturn a law that did not reflect evolving cultural ideologies surrounding the use of contraceptives. Similarly, the Supreme Court case *Whole Woman's Health v. Hellerstedt* demonstrates a contemporary example of a shift in socialization that is currently occurring through a disciplinary network. Although there are limitations to the ability of the American legal system to socialize citizens, the judiciary best exemplifies how aspects of disciplinary power can assist in explaining how the American people are socialized through networking organizations.

THESIS

The study of disciplinary power permits a thorough evaluation to be conducted that explains how and why the judiciary has the primary ability amongst governing bodies in the United States government to socialize the American people, an evaluation that cannot be rendered by the dimensional model. Although the judiciary embodies several aspects of disciplinary power, this thesis is simply Foucaultian inspired and will primarily focus on how power exists in net-like systems and how it has a socializing affect on those that it comes into contact with. The Foucaultian inspired interpretation of disciplinary power presented in this thesis will be paired with the mathematical model, network theory, to demonstrate where power is and isn't located and how it is exercised between independent members of organizations. The judicial branch of the United States government shares organizational traits set forth by disciplinary power,

socialization, and network theory that reveal how the judiciary possesses the ability to socialize the American people.

Chapter 2: Introduction to Political Power Theory

INTRODUCTION

The dimensional and disciplinary models of power are briefly introduced in this chapter to explain how and why the dimensional model defines power as a commodity held *over* individuals and the disciplinary model defines power as an entity *between* individuals. The definitions of power produced by each model help explain why the disciplinary model is a more appropriate study to explore power in the United States government, in regards to the theory presented in this thesis. Additionally, it will eventually reinforce the rationale as to why the study of disciplinary power is an effective model to evaluate how the American legal system can have a socialization effect on the general public as a result of power flowing through networks.

THE DIMENSIONAL MODEL OF POWER

Steven Lukes describes three dimensions of power that expand from one another to encompass each scenario in which power may be exercised *over* individuals within governing bodies. The first dimension or “pluralist view of power” defines power as “something like this: A has power over B to the extent that he can get B to do something that B would not otherwise do” through conscious decision-making on the part of A.⁵ The two-dimensional model is also known as the second face of power because it is concerned with non-decision making rather than a focus on decision-making. The expansion from the first model to the second is clear as “the two-dimensional view of power involves a qualified critique of the behavioral focus of the first view...and it allows for consideration of potential issues over which there is an observable conflict of interests, seen as embodied in express policy preferences and

⁵ Lukes, Steven. *Power: a radical view*. 2nd ed. New York: Palgrave Macmillan, 2005. Print. 16.

sub-political agendas.”⁶ Although each dimension involves conflicts of interests, a “latent conflict” must be present in the third dimension, “which consists in a contradiction between the interests of those exercising power and the real interests of those they exclude.”⁷

Political power theorist John Gaventa summarizes the three dimensions of Lukes’ theory, regarding one of his own studies, by explaining, “the power of A to prevail in the first dimension increases the power to affect B’s actions in the second dimension, and increases the power to affect B’s conceptions in the third.”⁸ The reason this observation about Gaventa’s respective study is appropriate is because it illustrates how each dimension of the dimensional model of power can be mutually reinforcing. This mutual reinforcement between dimensions will eventually help explain why the dimensional model and disciplinary power cannot cohesively be applied in a single study, such as the one presented in this thesis. The dimensional model suggests that power is a possessive entity that one party uses to disadvantage another party in their favor. Lukes suggests that power is a relational commodity that is unevenly distributed amongst independent entities in order to advance the agenda of a single party, which insinuates the absence of a network. Since each of the three dimensional models can be viewed as mutually reinforcing, Lukes’ political power theory will be referred to singularly as the dimensional model for the purpose of maintaining clarity throughout this thesis. The primary relevance of the dimensional model to this thesis is to contrast

⁶ Lukes, Steven. *Power: a radical view*. 2nd ed. New York: Palgrave Macmillan, 2005. Print. 25.

⁷ Lukes, Steven. *Power: a radical view*. 2nd ed. New York: Palgrave Macmillan, 2005. Print. 28.

⁸ Gaventa, John. *Power and powerlessness: quiescence and rebellion in an Appalachian valley*. Urbana: University of Illinois Press, 1980. Print. 22.

how this study generally defines power as a relational commodity of one party *over* another, which reiterates why it will be referred to singularly as the dimensional model for the purpose to maintain clarity.

Figure 1: A Summary of the Dimensional Model

Figure 1: *The faces of power controversy: political power in three dimensions*

	One-dimensional view	Two-dimensional view	Three-dimensional view
Proponents	Dahl, Polsby, classic pluralists	Bachrach and Baratz, neo-elitists	Lukes, Marxists, neo-Marxists and radical elitists/pluralists
Conception of power	Power as decision making	Power as decision making and agenda setting	Power as decision making, agenda setting and preference shaping
Focus of analysis	The formal political arena	The formal political arena and the informal process surrounding it (the corridors of power)	Civil society more generally, especially the public sphere (in which preferences are shaped)
Methodological approach	'Counting' of votes and decisions in decision making arena	Ethnography of the corridors of power to elucidate the informal processes through which the agenda is set	Ideology critique - to demonstrate how actors come to misperceive their own material interests
Nature of power	Visible, transparent and easily measured	Both invisible and visible (visible only to agenda setters), but can be rendered visible through gaining inside information	Largely invisible - power distorts perceptions and shapes preferences; it must be demystified

Source: Hay, C. (2002: 180)

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The above chart demonstrates aspects of each dimension of the dimensional model that will later be compared and contrasted by the disciplinary model of power. Note how under the three-dimensional model, this chart explains how this study of power evaluates agenda settings by one party with the intention of having another party

⁹ Hay, C. and Rosamond, B. (2002) 'Globalization, European Integration and the Discursive Construction of Economic Imperatives', *Journal of European Public Policy*, vol. 9, no.2: 147-67.

lose their ability to act in their objective interests. The dispositional agenda setting by one party over another in the dimensional model of power suggests that it is a study of coercion, manipulation, or authority, rather than “power,” as interpreted and employed in this thesis.

THE DISCIPLINARY MODEL OF POWER

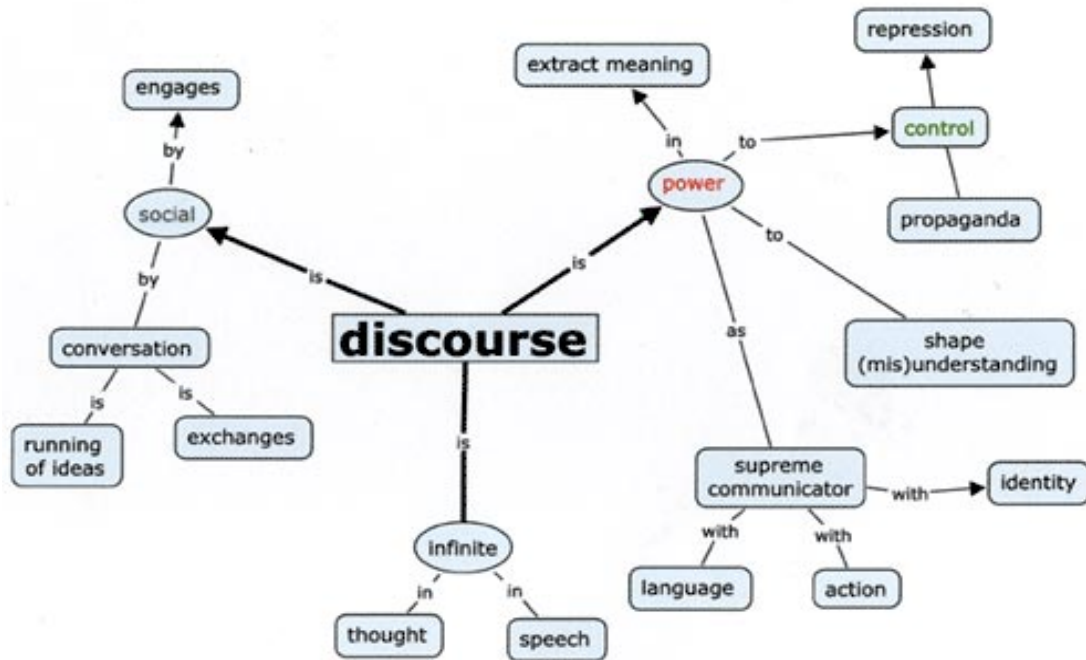
Michael Foucault’s definition of power appears in his discussion of the qualities that must be absent for power to exist in any situation or scenario, which makes it necessary to establish a definitive definition of power that will be used in this thesis. His discussion suggests aspects that are required to be present because of what is absent. According to Foucault’s discussion of the disciplinary model, it can be determined that power exists in individuals within net-like systems that are decentralized, produce truth, have no conflict of interests when normalizing judgments occur, and have a socialization effect. In other words, disciplinary power is the study of how individuals perceive truth as it is presented within the community wherein they reside and how the way in which they interpret this truth dictates their thoughts and actions in their every day lives.¹⁰ This adaptive definition does not define disciplinary power in totality but it includes aspects of the disciplinary model that inspire an investigation into how the judiciary exercises its ability to socialize the American people as a result of its networking structure. For the purpose of maintaining clarity throughout this thesis, this adaptive definition will be referred to as the disciplinary model of power, while it does not include a complete and comprehensive definition of Foucault’s true interpretation of the term.

¹⁰ Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books.

The disciplinary model suggests that power is in no way a commodity that one party can possess in order to disadvantage another party in order to gain advancement in any regard, especially when normalizing judgments occur. Rather, the model illustrates how power is non-possessive and exists in the exchange of ideas between individuals within a network. This exchange of ideas has an unintentional socializing affect upon every individual who has the capacity and intent to participate to collectively generate and perpetuate that effect the establishment of shared values, norms, and ideologies.¹¹ This thesis intends to evaluate how networks tend to have a socialization effect on groups of distinct individuals when exercised through network by certain institutions.

¹¹ Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books.

Figure 2: Networks of Disciplinary Power



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The above chart demonstrates how the power of socialization flows through a discursive network when evaluated under the disciplinary model of power as well as the interdependence of distinct organizations that have the ability to influence one another.

THE DISCIPLINARY MODEL OF POWER: AN APPROPRIATE STUDY FOR SOCIALIZATION OCCURRING THROUGH THE JUDICIARY

The dimensional and disciplinary models of power could not diverge more from one another because they are each established on conflicting foundations. Foucault starts his examination of disciplinary power by stating that power only exists in the presence of mutually accepted truth, which can be interpreted as shared values or ideologies between members of a network. This truth or societal norm can be unveiled through the judicial process because court rulings intend to interpret the law in accordance with the needs of evolving cultural circumstances. While disciplinary power

¹² Greaves, Rob. "Power and Its Influence Through Discourse." Web. 24 Dec. 2012.

states that truth and power are inseparable, the dimensional model suggests that power is present when the powerless do not have an understanding of truth or have conflicting ideologies because A is generally getting B to do something that is not in B's interest. Shared ideologies in the form of truth are important for peaceful coexistence in society because conflicting values permits a forum for the exercise of disciplinary power, which has the potential to lead to coercion. The production of truth is related to the issue of whether a conflict of interest must be present in order for power to exist. The disciplinary model of power asserts that power cannot exist when there is a conflict of interests because one party would be coercing or manipulating the other to do something that harms them, whether that party is aware or not.

Lukes disagrees, claiming that a conflict of interest must be present in order for power to be exercised because that is how a hierarchy of dominance often is established. In other words, in order for power to be exercised, under the disciplinary model, one party must advance their interests, while the other party becomes disadvantaged. However, the disciplinary model suggests that forfeiting the interests of one party in order to advance the interests of another is not an exercise of power. This is because this forfeit results from a conflict of interests, which implies that one party must exercise power, as defined by the dimensional model, *over* another, rather than *between* others, to advance their interests. If this type of power were to be exercised by the American government, it would likely be viewed as coercively corruptive. This is because a democracy is a government by the people, for the people, which ideals suggests that one party is not forcing another to act in a manner that is not in their

interests. This rationale contributes to why the disciplinary model is a more appropriate study to evaluate how power is exercised in the United States government.

The primary difference between the two models of power is that the dimensional model claims that power exists in the relation of one party *over* another and the disciplinary model explains how power exists in relations *between* one party and another. This difference establishes the foundation as to why the disciplinary model helps locate power within the United States government and determine how that power is exercised. This thesis focuses on how disciplinary power is exercised through net-like systems and has a socialization effect. Upon turning to the American government, it becomes evident that the judiciary embodies these fundamental aspects of disciplinary power more thoroughly than the legislative or executive branches. In no way does this imply that the legislature or executive are unable to exercise disciplinary power or hold power under alternative studies. This assertion simply establishes the foundation for an investigation of how the judiciary is the most accessible agents of socialization for United States citizens to exercise disciplinary power through network to establish shared values.

Chapter 3: Introduction to Socialization Theory

INTRODUCTION

Socialization refers to the process by which individuals internalize the norms, customs, values, and ideologies of their respective communities and greater societies.¹³ This process is natural and necessary for peaceful coexistence amongst a variety of distinct individuals participating in a single network. This is because every individual instinctively adopts the necessary functions to perform subconscious decision making in order to navigate their way within a certain organization.¹⁴ Furthermore, socialization is imperative for distinct regional cultures to cooperate well when interacting with one another because it creates a forum of commonality and understanding that is necessary in order to resolve possible points of disagreement between them. It is important to note that socialization is not simply a mechanism of universal conformity. Rather, it establishes a communal foundation for diverging values and norms to be evaluated, generated, or perpetrated in a non-coercive and non-manipulative manner.

Socialization occurs through a variety of mechanisms that operate on different levels, which causes masses of information to subconsciously be internalized by all individuals. Since socialization occurs through the absorption of information by an individual in any given setting, it must result from social exchanges and interactions that transmit ideas in which ideologies are embedded. This is because shared ideas transform into the values and norms that are developed in any given organized

¹³ Clausen, John A. *Socialization and Society*, Boston: Little Brown and Company, 1968. Pg. 5.

¹⁴ Van Maanen, J., & Schein, E. H. (1979). Toward a theory of organizational socialization. B. Staw & L.L. Cummings (Eds.), *Research in organizational behavior* (pp209-264). Greenwich, Ct:JAI Press.

environment.¹⁵ Socialization can be viewed as a form of social transaction between individuals within an organization or between an individual and an organization, regardless of whether they are or are not a member of the community in which the transaction occurs.

The United States legal system utilizes aspects of disciplinary power to effectively and efficiently uphold norms and values in order to maintain a peaceful and cooperative society through transmitting information through networks. Not only does the judiciary function to maintain established norms and values, it is responsive to certain values if they are adept to change over time, which reflects the original intentions of the Founding Fathers to maintain fluidity of law. The judiciary has the ability to socialize American citizens, to the best of the ability that the United States government is able, because it lies out and responds to changing societal norms. It is an important distinction that the judiciary is an establishment that upholds some norms and evolves others along side evolving cultural circumstance because this practice prevents the possibility of an ill-founded shift in socialization. The legal system functions as a mechanism of socialization because cases are brought to court as a result of a dispute between members of an immediate network. The role of the court is to deliver a holding on the basis of upholding the status quo or responding to evolving social circumstances. The holdings that develop from these disputes have the ability to socialize the American people by upholding or establishing new norms, values, and ideologies that become internalized by all citizens.

THE ORIGINS OF SOCIALIZATION

¹⁵ Clausen, John A. *Socialization and Society*, Boston: Little Brown and Company, 1968. Pg. 5.

Socialization can be briefly defined as the internalization of organizational ideologies, which leads to a few general questions, which are: who perpetuates socialization, who becomes socialized, and how does it all happen? Although socialization can take many forms, these basic questions are imperative to answer in order to determine exactly how the judiciary maintains the ability to act as a general socializing mechanism for the American people. However, in order to come to a conclusion on this matter, socialization theory and its varying levels and degrees must be properly explained and interpreted. This explanation will eventually contribute to an understanding of how courts of each level within the appellate process have a broadening socialization effect on the regions and issues over which a court has jurisdiction and how that potential effect may influence jurisprudence.

Socialization has been defined as the process by which an individual internalizes the ideologies of their respective community. Although this process almost always results from social transactions, the actual internalization of values and norms can occur and be provoked by almost anyone or anything.¹⁶ Therefore, it is beneficial to understand how the socialization process occurs from its most basic to its most complex levels. In order to determine how societal ideologies are internalized, which is one of the most complex forms of socialization. It is important to understand how the socialization process varies in degree and how each level has the ability to influence another.

The foundation for socialization is laid down in the private sphere within the home because parents begin to unintentionally and intentionally socialize their children

¹⁶ Brown, Bradford, and Mitchell Princestein. *Encyclopedia of Adolescence*. Academic Press, 2011.

the second that they are born. This is important because personal socialization contributes to how an individual becomes socialized in the public realm. The biological familial relations combined with how an individual is raised establish the values and norms with which they will enter their community, which influences how they will be socialized by an external institution.¹⁷ Although parents do have some freedom to raise their children as they wish, they too are bound to a socialized process that has been greatly influenced by the courts, which will be discussed in the case studies.

Personal identity is developed from early socialization in primary discourse communities through socialization amongst family members. This identity is created when parents reward or punish in varying degrees because children quickly and subconsciously internalize that good behavior is in the objective interests of all family members. This is because both children and parents generally desire peaceful cooperation and coexistence.¹⁸ Socialization that takes place in the home is important to note because it influences how an individual will interact with society throughout the rest of his or her life. Social identity is developed outside of the home and influences individual decision-making that reflects how socialization originally occurred.¹⁹ This primary phase of socialization also illustrates the process in its most basic form, which helps pinpointing and understanding socialization on a grander scale.

¹⁷ Brown, Bradford, and Mitchell Princestein. *Encyclopedia of Adolescence*. Academic Press, 2011.

¹⁸ Brown, Bradford, and Mitchell Princestein. *Encyclopedia of Adolescence*. Academic Press, 2011.

¹⁹ Brown, Bradford, and Mitchell Princestein. *Encyclopedia of Adolescence*. Academic Press, 2011.

The individual actions of each person in a community come together as a whole to subconsciously evolve social norms in a continuous manner.²⁰ However, the thought process that shapes these norms must be molded, to some extent, by some external factors. Social norms must be established in accordance to the law, if actions that are influenced by those norms are to be legally protected. This is because the law is ideally designed to create guidelines that shape individual actions in an attempt to extend equal protection and rights to all citizens. The natural instinct to follow the law can be traced back to the “punish and reward” system within a home. The combination of private and public socialization contributes to how communities are formed and how laws are created in response to maintain those norms and to reinforce those that already exist. The manner in which individuals internalize the norms, customs, values, and ideologies exists in tiers that begin in the home and expand and evolve between their local community, regional community and, national community.

The American legal system is an important socializing agent for citizens because it formally outlines acceptable and unacceptable ways to interact with other individuals in any environment in order to extend equal protection of the laws to all citizens. The legal system prosecutes violators of the law because they present a conflict of interest and interrupt the process of socialization, which inhibits peaceful coexistence amongst individuals in a society. The judicial branch also offers an outlet for citizens to challenge the laws that socialize citizens, which extends an equal opportunity for all citizens to challenge or influence socialization. This creates a forum for socialization to exist outside of a hierarchical organization and establishes interdependence between the

²⁰ Clausen, John A. *Socialization and Society*, Boston: Little Brown and Company, 1968. Pg. 5.

people and the judiciary. Although social norms are generally established in pursuance to the law to receive legal protection, evolving cultural circumstance sometimes mandate the law to evolve along with them. The judiciary offers an outlet for citizens to generate a shift in socialization through the judicial network to have new and legitimate cultural values guaranteed by the law.

The relationship between the legal system and the citizens in American society permits fluid socialization that has the ability to adapt to changing circumstances over time. This adaptability attempts to prevent the judiciary from enforcing laws that do not protect societal norms and values. The interactions that take place between the government and citizens through the legal system demonstrate how socialization can be responsive to the shared ideologies that result from social transactions. The judiciary is a major organization that establishes the norms, customs, values, and ideologies of American society through utilizing several aspects of the disciplinary model of power. The reason the judiciary remains the most representative socializing agent is because it protects the objective interests of all citizens equally and maintains the most accessible relationship with the American people of each of the three branches of government.

SOCIALIZATION & DISCIPLINARY POWER: A SINGLE THEORY

The definitions of socialization and disciplinary power complement and reinforce each other in order to explain how the American legal system functions as a socializing mechanism for citizens of the United States. This is because in order for disciplinary power to be exercised between individuals in a network, it must have a socializing effect.

Socialization is explicitly defined as “the process by which a person learns the values, norms, and required behaviors which permit him or her to participate as a member of the organization.”²¹ This definition is adopted from organization socialization theory, which evaluates how employees are socialized in a business model. However, the theory is often adapted and implemented to interpret how individuals are socialized in any given organizational structure.²² In this case, this definition of socialization will be utilized to demonstrate how citizens make decisions within the organization that is their community.

Disciplinary power is defined to exist in net-like systems that are decentralized, produce truth, have no conflict of interests when normalizing judgments occur, and have a socialization effect.²³ Disciplinary power is the study of how individuals perceive truth as it is presented within the community wherein they reside and how the way in which they interpret this truth dictates their thoughts and actions in their every day lives.²⁴ Therefore, when the effect of disciplinary power is interpreted, it is nearly synonymous with the effects of socialization. The major parallel drawn between the definition of socialization and the exercise of disciplinary power is how one’s perception of truth dictates their thoughts and actions in a way that is indirect and non-

²¹ Van Maanen, J., & Schein, E. H. (1979). Toward a theory of organizational socialization. B. Staw & L.L. Cummings (Eds.), *Research in organizational behavior* (pp209-264). Greenwich, Ct:JAI Press.

²² Van Maanen, J., & Schein, E. H. (1979). Toward a theory of organizational socialization. B. Staw & L.L. Cummings (Eds.), *Research in organizational behavior* (pp209-264). Greenwich, Ct:JAI Press.

²³ Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books.

²⁴ Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books.

coercive or manipulative in nature. In other words, disciplinary power and socialization are closely linked because one evokes the other.

In order to explain how and why the judiciary is the most accessible agent of socialization in the American government, it must be understood how disciplinary power is exercised within its network. Then, the socialization effect of jurisdiction must be proved to have a cause and effect on how individuals internalize the values, norms, and ideologies that influences decision-making and actions within their private lives.

DISCIPLINARY POWER IN THE JUDICIARY: TRUTH

The judiciary fulfills each of the requirements necessary to demonstrate that the judicial branch is the most representative entity of disciplinary power in the United States government. Since disciplinary power must produce a socialization effect, it is intuitive to theorize that the judiciary may also be the greatest socializing agent in the United States government. An important aspect of disciplinary power is that it must produce truth, which the judicial system is designed to unveil, especially in the midst of tremendous controversy, which often result from large-scale shifts in socialization. Foucault states, “truth is a thing of this world: it is produced only by virtue of multiple grams of constraint and it induces regular effects of power. Each society has its regime of truth.”²⁵ The judiciary can be viewed as a regime of truth in the United States as it produces truth in a variety of ways. The ultimate goal of any legitimate case brought to a court is to hear the court’s jurisdiction. The very definition of jurisdiction states that it is not only “a court’s power to decide a case or issue a decree” but that the court also

²⁵ Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books. 131.

has the “power to declare the law (as to particular subjects or persons).”²⁶ The production of truth is an important aspect of disciplinary power in relation to socialization. This is because, in the context of this thesis, truth can be viewed as shared ideologies that establish cultural norms, which influences how individual members independently make decisions. In the absence of truth or shared ideologies, individuals can exercise disciplinary power within the judiciary to receive jurisdiction, which can be viewed as hierarchical observation, an aspect is disciplinary power, which resolves the dispute in accordance to commonly held values that are upheld by the law.

The unveiling of truth through jurisdiction makes the judiciary unique from the legislative and executive branches because the court is the only governing body that has the ability to declare the law without a check from another branch. The legislature has the ability to create bills that Congress and the House of Representatives hope become law. However, “every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States” who has the ability to approve or veto.²⁷ Although the bill has the ability to return to the legislature to be passed by a supermajority, the procedure is a much more tedious task than judges offering their jurisdiction for a case, which immediately becomes law. Once the Supreme Court gives ruling on a case, their holding becomes an absolute truth as it becomes “Law and Fact” as long as it is made in pursuance to the supreme law of the land.²⁸

²⁶ Davidson, John. "Standing and Justiciability." Constitutional Law Class. 08 Apr. 2015. Lecture.

²⁷ *U.S. Constitution*. Art. I. Section VII. Clause II. Print.

²⁸ *U.S. Constitution*. Art. III. Section II. Clause II. Print.

The judiciary's check on the legislative and the executive branches through judicial review is one of the greatest examples of how the judiciary exercises disciplinary power to unveil truth behind how the law is intended to be interpreted. The Supreme Court case *Marbury v. Madison* established that the judicial branch possess the power of judicial review to overturn unconstitutional federal legislation in 1803. Chief Justice Marshall delivered the opinion of the court, during which he states, "the question whether a right has vested or not, is, in its nature, judicial, and must be tried by judicial authority."²⁹ This truth is embedded in the idea that no legislation can oppose the Constitution or any laws made in pursuance to the document because "a legislative act contrary to the Constitution is not law" and it is the "duty of the judicial department to say what the law is."³⁰ In other words, judicial review gives the Supreme Court the ability to interpret the Constitution to discover the intent of the original framers of the Constitution, which was to create fluidity of law to protect actions made in accordance to legitimate shifts in socialization.

Under the assumption that most citizens have a general grasp of the law or have the moral reasoning to generally determine right from wrong, due to value based reasoning developed in the home, it can be determined that citizens elect to abide by the law, or not. Private citizens are not the only individuals that are socialized to refrain from harming cultural values because all citizens are ideally and theoretically held to equal standards, whether they directly work to maintain societal values and norms or not. The structure of the judiciary employs disciplinary power upon Supreme Court justices because they only "hold their Offices during good Behavior," which conveys

²⁹ *Marbury v. Madison*, 5 U.S. 137 (1803)

³⁰ *Marbury v. Madison*, 5 U.S. 137 (1803)

the duality of socialization and independent decision-making while justices come upon a decision.³¹ This distinction is important because evaluators of the law are held accountable to make decisions that reflect cultural values, just as private citizens. As mentioned previously, socialization is a form of social transaction, in which no individual wields power over another. This dependence between the governors and the governed to protect shared values helps explain why judicial review may not present a conflict of interest between the judiciary and the people. Together, the people and the courts are the mechanism that generates a common knowledge that reinforces the exercise of disciplinary power that influences the lives of all American citizens by enforcing a socialization effect *between* individuals.

An excellent example of disciplinary power at work in the Supreme Court is when the justices exercise judicial self-restraint and defer cases based on the political question doctrine or if the case would lessen the authority of the court in the public eye. The significance in this lies in the fact that justices are selective and generally focus their attention on hearing cases that reflect change that is demanded by shifts in societal values, norms, or ideologies as perceived by the general public. This discretion prevents the courts from preemptively forcing shifts in socialization as they please. Similarly, justices and citizens possess self-autonomy over their actions but the institution in which they reside, indirectly influences the decisions that they make.

Although it is the duty of the court to interpret the law, Supreme Court justices have an independent discretion over what controversies they choose to hear. For example, Justice Taney delivers the opinion of the Supreme Court in *Luther v. Border*,

³¹ *U.S. Constitution*. Art. III. Section I. Clause I. Print.

during which he states, “much of the argument of the plaintiff turns upon political rights and political question, upon which the court has been urged to express an opinion. We decline in doing so.”³² Although justices operate within a mechanism that influences their every action, they have the agency to determine whether cases reflect societal values that have already changed and need to be responded to or whether they would be inappropriately changing the status under unconstitutional discretion. It is the duty of justices to hear cases that will guarantee protection to individual actions made in pursuance to evolving cultural circumstances that need to be reflected in a fluid legal system.

The cooperation between individuals and the rules within a system demonstrates how disciplinary power is at play in the judiciary and where socialization occurs between the government and the people. In order to maintain the integrity of the judicial branch, Supreme Court justices will also occasionally defer certain cases that would change the status quo on issues of tremendous controversy. Deferring cases may demonstrate how the courts respond to shifts in societal values and norms rather than enforcing their own ideologies. The rationale for the judiciary’s concern with their “institutional reputation” is that “if the court engages in politicized controversy, people aren’t going to trust the judiciary, thinking they are taking sides with a political party.”³³ The integrity of the court is often what encourages citizens to trust and abide by the laws because trust along with the relationship between the people and the judiciary is where the power of socialization lies. Additionally, the Supreme Court

³² *Luther v Border*, 48 U.S. 1 (1849)

³³ Davidson, John. "Political Question Doctrine." Constitutional Law Class. 13 Apr. 2015. Lecture.

understands that hearing cases that fall under the category of political question would be an “inconceivable expansion of judicial power,” which may forfeit the exercise of disciplinary power.³⁴

If the judiciary were to overstep their delegated role, the governing body could shift away from exercising disciplinary power and move closer to a manipulative or coercive governing entity. Harvard organizational and political power theorist Jeffery Pfeffer elaborates on the importance of disciplinary power in government in one of his publications. He claims, “not understanding the degree to which the situation is politicized may cause a person either to use power and influence when it is unnecessary and thereby violate behavioral norms as well as waste resources, or to underestimate the extent to which power needs to be employed, and fail to the task of implementation.”³⁵

DISCIPLINARY POWER IN THE JUDICIARY: DISTRIBUTION

The third requirement for an entity to demonstrate an exercise of disciplinary power is that power is distributed amongst several forums. The disciplinary model explains how power “is never localized never in anybody’s hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organization,” which is exactly how the judicial system functions.³⁶ Similarly, socialization is not a commodity or piece of wealth either because it simply represents the internalization of societal values, norms, and ideologies that result from social transactions. Although the “judicial Power of the United States” is “vested in one

³⁴ *Pacific States Telephone and Telegraph Co. V Oregon*, 223 U.S. 118 (1912)

³⁵ Pfeffer, Jeffery. *Managing with Power: Politics and Influence in Organizations*. Boston, MA: Harvard Business School, 1992. Print. 33.

³⁶ Foucault, Michel, & Gordon, Colin. (1980). *Power/knowledge : selected interviews and other writings, 1972-1977* (1st American ed.). New York: Pantheon Books. 98.

Supreme Court”, power is shared amongst “inferior courts” and between the people that interact with those courts as well.³⁷

The Supreme Court does not have the capacity to hear all cases so it only has original jurisdiction in cases “affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party.”³⁸ The power of the judiciary extends to inferior courts to address a greater variety of issues in more appropriate forums that are responsive to specific regional cultural ideologies. This allocation and distribution of power within the judicial system permits the needs of diverse communities to be met. This is important because the norms, values, and ideologies can be different throughout the region because the internalization of federal information can vary by location. This observation refers back to the idea that socialization exists in tiers from a private to a national level and how the judiciary is responsive to the specific needs or different communities.

The judicial branch is the most exemplary form of disciplinary power that is exhibited in the United States government today because of its purely unique ability to socialize the American people. The primary goal of the judicial branch is to unveil truth behind the legal interpretation of controversies, which permits prevailing societal ideologies to be protected from unwarranted change. The ability to socialize is distributed amongst several levels of state and federal courts in order meet the needs of whichever community that a court holds jurisdiction over. The most obvious reason that the judiciary remains the best example of disciplinary power is found in its structure.

³⁷ *U.S. Constitution*. Art. III. Section I. Clause I. Print.

³⁸ *U.S. Constitution*. Art. III. Section II. Clause II. Print.

The court system functions in a net-like system, in which power is shared so that it can meet the appropriate needs of the American people. The disciplinary model of power explains that power is never held in one person's hands because power is not a commodity or piece of wealth. Although the people of the several states hold proportional representation in the House of Representatives and equal representation in the Senate, the power vested in Congress by the people is still more centralized than that of the judiciary. The judiciary is a tool for the people to maintain their rights and liberties whereas when citizens elect members to congress, they can only hope their best interests stay in mind. The judicial branch is also less centralized than the executive branch because power is not vested in a unitary body, as it is in the President. Disciplinary power does not expressively demonstrate socialization as a whole but the previously discussed factors are synonymous with aspects of socialization within the judicial branch of the United States government.

Chapter 4: Introduction to Network Theory

INTRODUCTION TO NETWORK THEORY

A network is defined as “a concrete pattern of relationships among entities in a social space”.³⁹ In its most basic form, network theory refers to the mathematical study of complex interacting systems.⁴⁰ The model was originally developed in order to demonstrate interconnectedness between related entities in the physical sciences. However, as the study has progressed, it has adapted in order to gain value in the realm of the social sciences. The study can be applied in a variety of ways to just about any field in order to evaluate how independent parts of an organization interact and influence one another. These interactions are interpreted in order to understand how and why an organization functions in a particular way. Furthermore, the model can assist in demonstrating how and why independent networks interact with one another as well. Network theorists generally graph their findings in a free-flowing chart or graph that represents the interconnectedness of individual parts within a single network.

Network theorist John Baez explains how a mathematical model can assist in developing an understanding of the social world. He states, “I call it green mathematics that would interact with biology and ecology just as fruitfully as traditional mathematics interact with physics.”⁴¹ He continues, “when dreaming of grand syntheses, it’s easy to get bogged down in vague generalities.”⁴² Network theory assists in negating distracting factors in a social study in order to focus on what is truly important. In order to determine the source of something as general as socialization in this thesis, it is

³⁹ Owen-Smith, Jason. “Network Theory: The Basics.” Organizational Theory Class, University of Michigan. Lecture.

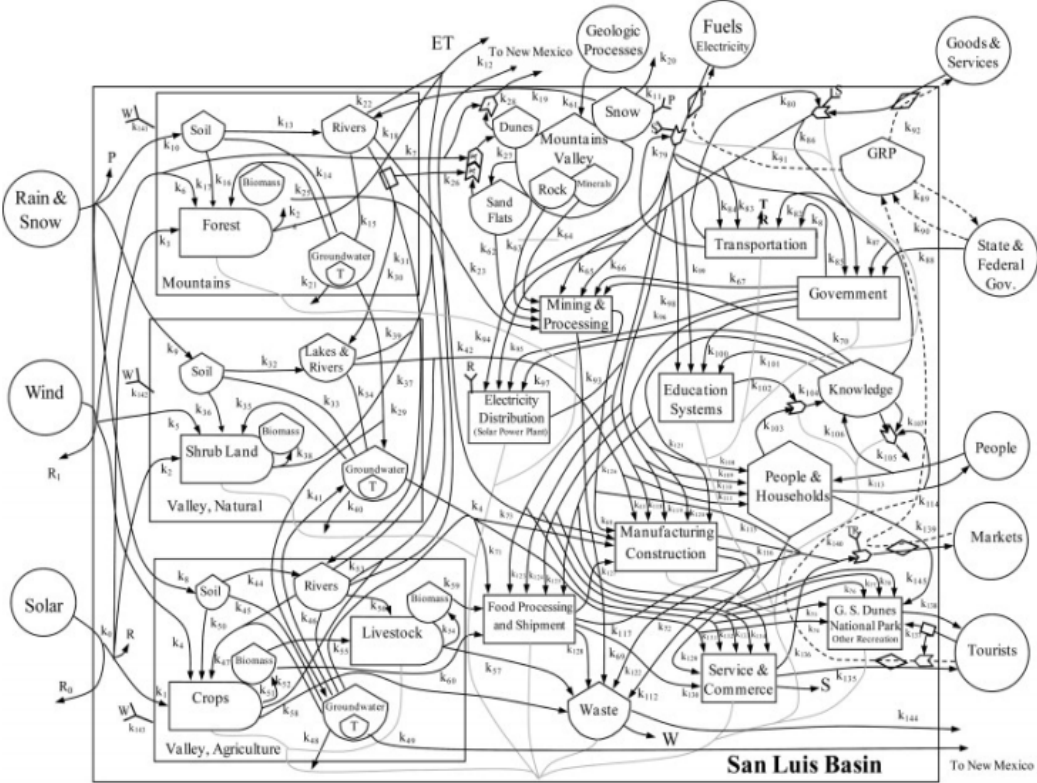
⁴⁰ Baez, John. *Network Theory*. U of California Riverside. Azimuth Project, 3 Feb. 2016.

⁴¹ Baez, John. *Network Theory*. U of California Riverside. Azimuth Project, 3 Feb. 2016.

⁴² Baez, John. *Network Theory*. U of California Riverside. Azimuth Project, 3 Feb. 2016.

absolutely necessary to negate distracting factors. This must be done in order to focus on what is relevant to draw a conclusion about how individuals are socialized by an organization and how that organization gains the power to socialize.

Figure 3: Social Network Theory



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The above chart is a common example of how network theory is implemented and graphed in order to convey how aspects of a single society are interconnected. This particular figure clearly shows how the mathematical model has been adapted in order to be applied to a vast array of institutions, ranging from government, environment, and the sciences. To some extent, the above graph represents little more than a large-scale version of image located on page 11, which conveys the interconnectedness of just a

⁴³ Baez, John. *Network Theory*. U of California Riverside. Azimuth Project, 3 Feb. 2016.

few aspects of society through the study of the disciplinary power. These two images are strong visuals that demonstrate a clear connection between the net-like structure theory presented in the disciplinary model of power and the organizational structure of network theory. Additionally, when network theory is implemented in order to determine how social organizational structures function, it is performing a similar process to that of applying aspects of the disciplinary model of power to a net-like system in order to determine where socialization occurs.

NETWORK THEORY, SOCIALIZATION & DISCIPLINARY POWER

Network and socialization theories are explicitly related to the study of disciplinary power. Disciplinary power claims that power is exercised in net-like organizations that produce a socialization effect. Socialization theory claims that individuals internalize ideologies as a result of interactions that occur in organizations. Social network theory studies how an organization uses disciplinary power to socialize independent members of an institution. Each theory assumes a unique approach to evaluate how and why members of an organization naturally act a certain way as a result of organizational structure. This thesis combines each approach to evaluate how disciplinary power is exercised through the judicial network to produce a socialization effect. In order to perform this analysis, network theory must be thoroughly evaluated in order to understand how the structure of an organization can yield a socialization effect.

It has been established that socialization is the process in which individuals internalize the values, customs, norms, and ideologies that they encounter in organizations throughout their life. The process of socialization begins in the home and expands as individuals transcend discourse communities. Similarly, the first network in

which an individual engages in is the family and expands as that individual enters the educational and professional sectors of his or her life. Social network theory evaluates how individuals internalize the ideologies of any given organization and how that internalization affects their decision-making but does not necessarily imply a socialization effect. However, it has been found that networks generally inspire conformity of thought and action amongst independent members in an organization, which can be perceived as organizational socialization.⁴⁴

Evaluating familial networks is important for the same reason that evaluating familial life is important for understanding socialization. The way in which a family is structured and organized to raise children in a certain way influences how those children perceive the world. Nobel Prize recipient Gary Becker helped develop an economic evaluation of private life that reveals how structure influences action at its most basic level within the home. He examines how the structure of an organization, especially within the family, establishes how information is perceived for the rest of an individual's life. He claims that understanding how ideologies are absorbed in familial life is important because an "analysis of the link between childhood experiences and adult preferences is closely related to rational habit formation" or in other words, socialization.⁴⁵ Becker's model for interpreting how structure shapes decision-making is partly influenced by Adam Smith's invisible hand metaphor, which explains how individual actions can have unintended societal benefits, which in large part agrees with

⁴⁴ Galaskiewicz, Joseph. *Exchange networks and community politics*. Sage Publications, 1979.

⁴⁵ Becker, Gary S. "An Economic Way of Looking at Life." Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 50.

several aspects of the disciplinary model of power because there is no latent conflict governing actions.⁴⁶

The theory behind Becker's research regarding familial life is that interests among family members are generally the same because a certain culture has been established. This type of environment generates conformity of thought that compels common actions that are mutually beneficially for all parties, whether they are performed altruistically or not.⁴⁷ He claims that this "intuitive assumption about behavior is only the starting point of systematic analysis" but "the rational choice approach embeds them in a framework that combines maximizing behavior with an analysis of...legislation that affects families."⁴⁸ He continues, "my current research considers an indirect way to generate commitments when promises and written agreements are not binding...related to the relational formation of preferences."⁴⁹

Becker is in part studying how individuals are compelled to make certain decisions as a result of their social interactions, without being forced to do so. In other words, he is describing how networks have a socializing effect on individuals and how power is exercised in the form of social transactions. He explains that people generally make decisions based on human capital, which is defined by opportunity for individual

⁴⁶ Becker, Gary S. "An Economic Way of Looking at Life." Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 48.

⁴⁷ Becker, Gary S. "An Economic Way of Looking at Life." Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 50.

⁴⁸ Becker, Gary S. "An Economic Way of Looking at Life." Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 48.

⁴⁹ Becker, Gary S. "An Economic Way of Looking at Life." Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 49.

advancement that does not adversely affect others.⁵⁰ The reason that this selfish model of behavioral decision-making functions well is because personal advancement must be assumed within the legal scope of the network to which an individual belongs in order to be legally protected.⁵¹ This brief summary of how primary networks function is important because “parents help determine the values of children...but what parents try to do can be greatly affected by public policies and changes in economic and social conditions.”⁵² This shows governance can penetrate the home to influence subconscious private decision-making, which makes the accessibility of the judiciary to guarantee protection from government interference crucially imperative.

Organizations adopt their ability to socialize individuals through transmitting common ideologies through networks in public spheres that influence private actions. Organizational theorists Joseph Galaskiewicz and Sondra Barringer explain how networks have the ability to influence public decision-making and actions because organizational identities are a byproduct of the culture within that organization.⁵³ The culture of an organization is established by that institution’s social values, norms, and ideologies. This observation about organizational theory helps prove that the structure of an organization establishes its ability to socialize the individuals within. The theorists explain that in order to determine how a “unitary character” or culture of an institution

⁵⁰ Becker, Gary S. “An Economic Way of Looking at Life.” Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 48.

⁵¹ Becker, Gary S. “An Economic Way of Looking at Life.” Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 48.

⁵² Becker, Gary S. “An Economic Way of Looking at Life.” Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 51.

⁵³ Galaskiewicz, Joseph and Sondra Barringer. *Social Enterprises: An Organizational Perspective*. New York: Palgrave Macmillan, 2012. Print. 48.

is developed, “one should look at structures of organization and social boundaries.”⁵⁴

This is because the structure of an organization generally establishes boundaries in which individual members of the network are free to act as they wish but their actions are influenced nonetheless.

Members generally abide by the structural boundaries of their organization because they take part in establishing those boundaries and it permits them to gain “human capital” in a legally protected manner.⁵⁵ Becker explains, “an important part of the theory is that the audience or stakeholders need performance standards which are linked to the categories which organizations make claims in order to evaluate organizations properly”.⁵⁶ Standards are established by the structure of an organization, which is developed out of the norms, values, and ideologies that have been produced by social exchanges within the institution’s network. The exercise of disciplinary power compels members of an organization to abide by and meet certain standards because a forum to share ideologies can prevent conflicts of interest. The evaluation of the organizational process permits an analysis for structural function to be performed in relation to an institution.

Galaskiewicz and Barringer explain that when evaluating “any type of organization” it is imperative to define the “multi-dimensional cross-classification of

⁵⁴ Galaskiewicz, Joseph and Sondra Barringer. *Social Enterprises: An Organizational Perspective*. New York: Palgrave Macmillan, 2012. Print. 49.

⁵⁵ Becker, Gary S. “An Economic Way of Looking at Life.” Nobel Lecture. University of Chicago. 9 Dec. 1992. Lecture. 49.

⁵⁶ Galaskiewicz, Joseph and Sondra Barringer. *Social Enterprises: An Organizational Perspective*. New York: Palgrave Macmillan, 2012. Print. 50.

organizational dependencies” that exist within that particular institution.⁵⁷ The theorists are suggesting that shared ideologies amongst independent parts of an organization come together to establish the culture within that network, rather than being implemented upon them. Consequently, that culture perpetuates an ongoing socialization effect that results from continuous interactions between members. In terms of this thesis, this observation demonstrates how networks assume the ability to socialize through the exercise of disciplinary power. This is because the members within that network produce the ideologies of that organization rather than having a pre-established norm imposed upon them. This interaction demonstrates an interdependent relationship between independent members of an organization and how an adaptive structural culture perpetuates conformity of thought and action. The study of organizational network theory is important because “governments play a role in the process of institutionalization” of societal norms, values, and ideologies.⁵⁸ This is especially true of the judicial branch of the United States government because it holds an interdependent relationship with the American people through its structure in order to maintain the status quo and to be responsive to necessary changing societal ideologies.

NETWORK THEORY IN THE JUDICIARY

The adaption of the disciplinary model of power in this thesis establishes that power is exercised through net-like systems in which power is distributed to have a socialization effect. Network and organizational theories contribute to an understanding

⁵⁷ Galaskiewicz, Joseph and Sondra Barringer. *Social Enterprises: An Organizational Perspective*. New York: Palgrave Macmillan, 2012. Print. 53.

⁵⁸ Galaskiewicz, Joseph and Sondra Barringer. *Social Enterprises: An Organizational Perspective*. New York: Palgrave Macmillan, 2012. Print. 64.

of why power functions in this manner. In a chapter dedicated to “Diagnosing Power and Dependence” within networks, Jeffrey Pfeffer states, “to be successful in getting things done in organizations, it is critical that you be able to diagnose the relative power of the various participants and comprehend the patterns of interdependence.”⁵⁹ This suggests that the relative power between an organization and its members permits that institution to function effectively and efficiently. The relationship and interdependence between the members of an organization and the institution is established through a socializing network.

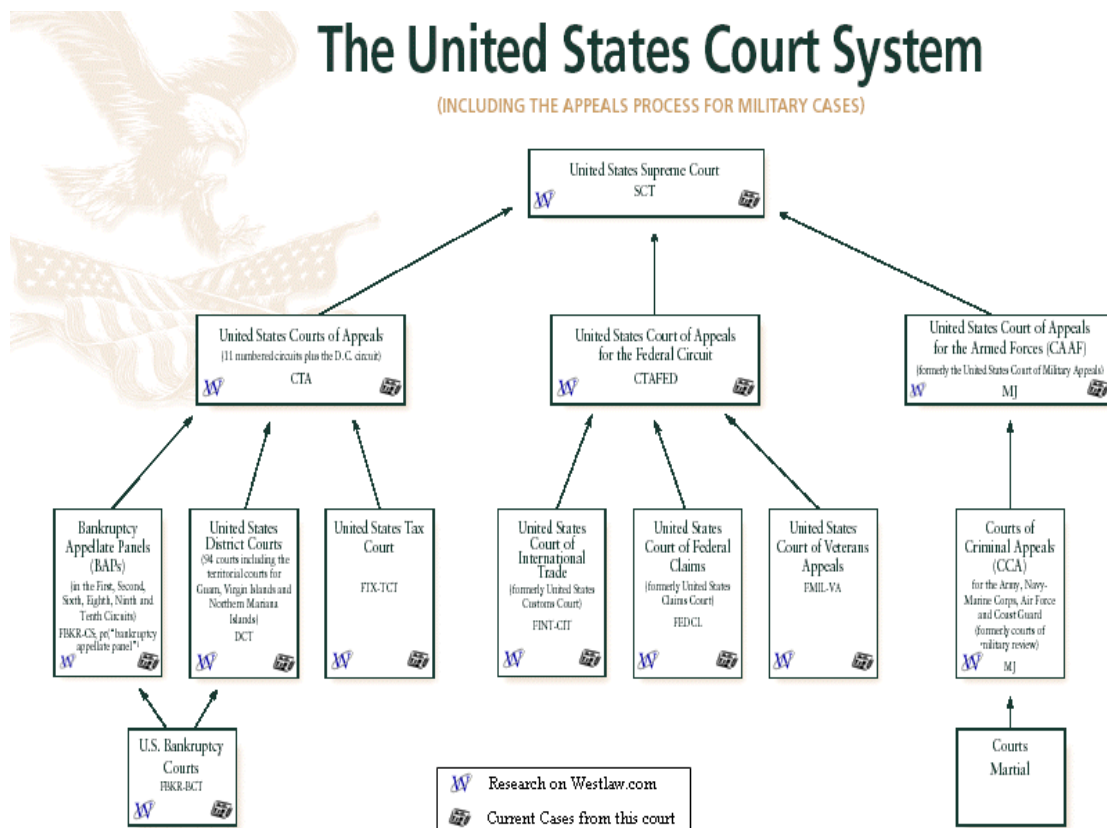
The reason disciplinary power was implemented in this thesis is because it rationalizes that power is relative and exists *between* individuals not *over* individuals, which suggests interdependence between parties. There are several patterns of interdependence between the judicial branch of the United States government and the American people. The judiciary is the most decentralized branch of government because of the accessible relationship that it holds with the people. This is because citizens turn to the judiciary to maintain the status quo when contested in order to protect their fundamental rights. Similarly, the judiciary enforces the status quo, if unjustly broken. This interpretation suggests that socialization is a product of the relationship between the American people and the judiciary as a result of its particular structure.

The judicial branch can be evaluated under network theory, as well as aspects of the disciplinary model of power, to evaluate the extent to which it can socialize the American people as a result of its net-like structure. Social network theory is represented through free-flowing charts, which measure interdependence between

⁵⁹ Pfeffer, Jeffrey. *Managing with Power: Politics and Influence in Organizations*. Boston, MA: Harvard Business School, 1992. Print.

independent parts of an organization. This evaluation yields an understanding of how and why the culture of an organization is established and maintained as a result of socialization. The physical structure of the judicial system leads to similar conclusions, however it is often poorly conveyed in graphical depictions of its structure.

Figure 4: The Judiciary as a Network



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The above graph is a detailed outline of the judicial branch of the United States government. The arrows illustrate how cases travel upwards from specifically tailored and localized courts, through the appellate process, and ultimately to the Supreme Court of the United States. This chart demonstrates how the judicial system is a networking organization as a result of its structure and how cases mobilize throughout the network through the appellate process. However, charts, like this one, illustrating the American

⁶⁰ “The US Litigation System.” *Pathlegal*. Pathlegal. Web.

legal system generally fail to show the interdependence between the judiciary and the people. There would be no upward movement through this network without the people attempting to uphold or contest the status quo through bringing their cases to court. Therefore, the above chart is incomplete. An ultimate goal of this thesis is to convey the incomplete portrayal of the judiciary as a unitary enforcing mechanism because its function is completely interdependent with the American people.

The judicial branch is as dependent on the people to uphold the values, norms, and ideologies of American society as the people are to the judiciary to provide a forum to establish an adaptive culture. It is important to understand the relationship between the legal system and the people because “by trying to ignore issues of power and influences in organizations, we lose our chance to understand critical social processes.”⁶¹ Failing to understand the interdependence between the people and their judiciary omits the ability to analyze the effects one has on the other. The social process between the network of the American people and the judiciary that is developed through the exercise of disciplinary power helps offers an explanation of how and why socialization occurs in broad-based organizations, such as the legal system.

THE FEDERAL JUDICIARY AS A SOCIALIZING NETWORK

In order to analyze how the network between the judiciary and the people functions as a socializing agent, it is imperative to understand the internal structural function of the court system itself. This is because the judiciary adopts its disciplinary power to socialize the American people specifically through its net-like structure. Within this net of the federal court system, the Supreme Court functions as the strongest

⁶¹ Pfeffer, Jeffery. *Managing with Power: Politics and Influence in Organizations*. Boston, MA: Harvard Business School, 1992. Print. 10.

point or knot, after which the net disperses into many inferior courts. Under the discretion of the Supreme Court, 13 United States Court of Appeals hear cases from 94 federal district level trial courts.⁶² The physical pyramidal structure that typically portrays the judicial system can be misleading in context of this thesis. This is because it appears to be extremely hierarchical, which is generally oppressive of the exercise of disciplinary power and can inhibit socialization. However, the pyramidal structure of the judiciary is simply representative of different levels of socialization that have a more expansive effect as each level is reached.

The 94 federal level district trial courts stand as a base to the pyramidal structure of the federal judicial system. This is because there is at least one district level court in each state and territory that is responsive and monitors the ideologies of its respective community. As previously mentioned, socialization exists in tiers, like the judicial system. An individual can be socialized differently in the context of their home, community, region, state, and nation. Each home, community, region, and state has different ideologies from one another. However, they all fall within the same ideologies of the nation in which they reside in order to maintain peaceful coexistence between diverse cultural regions. The federal level district courts monitor and maintain the status quo of localized regions in response to its interdependence with the people. However, often times an issue cannot be resolved within a district court because an issue may arise that mandates a broader shift in socialization. When this occurs, a case can be appealed to one of the 13 appellate courts that reside over assigned district trial courts.

⁶² "Court Role and Structure." United States Courts. Administrative Office of the U.S. Courts, n.d. Web. 10 May 2015.

The second level of the judicial pyramid is the United States Court of Appeals, to which cases arrive after failing to be resolved in the federal level district courts. The role of the appellate court is to hear cases and determine whether the law was appropriately applied by the federal level district court.⁶³ If the appellate court upholds the decision from its inferior court, the status quo is maintained and represents that the issue at hand does not mandate a shift in socialization. However, if the appellate court overturns the jurisdiction of the district courts, a shift in socialization is evident because the law is being changed to guarantee protection of actions, which once did not mandate protection. This is because the appellate courts have the ability to establish legal precedent for future cases that contest the status quo.⁶⁴ A decision rendered by the appellate courts affects a broader community than that of the district courts, which is why it stands above on the pyramidal portrayal of the federal judiciary. The appellate courts do not wield more power than the federal level district courts because power is a non-possessive entity. Rather, the decision rendered by the appellate courts simply has a broader relationship with a greater number of citizens. In some cases, the plaintiff is unsatisfied with the decision of the appellate courts and can attempt to bring their case to the Supreme Court of the United States.

The Supreme Court stands at the top of the judicial pyramid because its decisions affect every individual within the organized network of the United States. Holdings offered by Supreme Court Justices reign as the supreme law of the land because they must be made in pursuance to the Constitution. Therefore, any individual

⁶³ "Court Role and Structure." United States Courts. Administrative Office of the U.S. Courts, n.d. Web. 10 May 2015.

⁶⁴ "Court Role and Structure." United States Courts. Administrative Office of the U.S. Courts, n.d. Web. 10 May 2015.

has the ability to mandate shifts in socialization by mobilizing a well-thought-out court case through the judicial network to guarantee protection of actions made in accordance to evolving societal circumstances. However, this shift in socialization would not come about without individuals willing to engage in social transactions with the judiciary. The pyramidal portrayal of the judicial system fails to convey how interdependent it is on the American people to function properly. The primary goal of the federal court system is to properly interpret and implement the law. However, the Founding Father anticipated changing societal circumstances and the need for the law to be adaptable, which is reflected in both Article III and Article V of the Constitution. This intention conveys how the legal system is structural designed to be the mechanism by which citizens can engage in order to demand legal changes to protect actions made in pursuance to shifts in socialization so that evolving societal needs can be met.

Figure 5: The Judiciary as a Network



The above image was developed specifically for this thesis and illustrates the factors that influence Supreme Court holdings. The traditional pyramidal structure portraying the judiciary effectively conveys the extent to which each federal court has the ability to socialize a larger network. However, it does not illustrate the interconnectedness between factors that influence jurisprudence, which results in socialization. This image demonstrates that Supreme Court holdings reflect a variety of factors within the network that is the United States. Each factor in this network depends on the other to come upon a decision that governs how individuals make decisions and act within their respective community. Additionally, it effectively demonstrates how the judiciary is in no way a unitary enforcing mechanism because it adapts to uphold evolving cultural values, norms, and ideologies.

A case is appealed in order to determine whether the trial court's holding was truly made in accordance with the law. Legal and political scholars have begun to evaluate the operations of lower courts and how they function within the scope of the judiciary and beneath higher courts. Roger Hartley and Salmon Shomade have contributed to network theory in order to investigate how trial courts function as an organization and how the external context of society penetrates the structure of the court system to influence judicial holdings.⁶⁵ They suggests that the relationship between the structure of the institution and the individuals participating both influence the results of a case, which demonstrate interdependence between the judiciary and the people as a result of structured socialization.

⁶⁵ Hartley, Roger, and Salmon Shomade. "The Application of Network Theory to the Study of Trial Courts." Conference Papers – Law & Society, (2005): 1.

Cases travelling up through the appellate process exemplify disciplinary power because citizens are working collectively with actors within the judiciary to unveil the truth through legal interpretation behind whether the previous court's holding was decided in accordance with the law. Once judges exercise their jurisdiction, their holding becomes law if the plaintiff is victorious, if not the status quo is upheld.⁶⁶ Regardless as to whether a court holds in favor of the plaintiff or defendant, their decision reinforces the power of socialization because it determines the rules citizens must continue abiding by or if they would need to change their actions. The judiciary functions to socialize American citizens to follow rules so that everyone is guaranteed protection under the law, which indirectly influences the decisions that every individual makes. The protection of every individual's liberties is one of the primary concerns of a democratic government and embodies the true intentions of the original framers of the Constitution.

THE STATE JUDICIARY AS A SOCIALIZING NETWORK

The founding fathers divided the judiciary into state and federal courts in order to effectively and efficiently meet the local and national needs of the American people as they evolved over time. Again, this separation within the judicial network permits the values, norms, and ideologies of different communities to be properly maintained by the interconnectedness of the people and the judiciary. State courts "handle most private and public law disputes" that do not regard federal question. However, a case can be

⁶⁶ "Court Role and Structure." United States Courts. Administrative Office of the U.S. Courts, n.d. Web. 10 May 2015.

moved over to the federal court system if it appears to be a more appropriate forum.⁶⁷

The fluidity between the state and federal courts demonstrates how the organizational structure of the judiciary is extremely adaptive in order to appropriately evaluate disputes. This is important because the decisions rendered by the judiciary influence how citizens carry about their private lives or in other words, has a socialization effect.

The law generally divides legal issues into one of two branches, one for public law and one for private law. Public law “involves the relationship among government institutions, and between government and private parties in society.”⁶⁸ This area of law generally focuses on adapting governmental infrastructure to meet the needs of society. Private law “is a generic term referring generally to the law governing conflict among private parties in society.”⁶⁹ Although public law is relevant to the theory presented in this thesis, private law will be more thoroughly explored because “governments have an interest in adjudicating these conflict because the enforcement of norms contributes to the overall stability of society.”⁷⁰ This suggests that court holdings contribute to societal stability, which means that the interdependent relationship between the people and the judiciary limits conflicts of interest. In other words, judicial renderings generate and perpetuate the cultural values of a society, alongside the general public. Therefore, the exercise of disciplinary power is present in the structural relationship between the people and the courts to socialize one another.

⁶⁷ "Court Role and Structure." United States Courts. Administrative Office of the U.S. Courts, n.d. Web. 10 May 2015.

⁶⁸ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 17.

⁶⁹ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 17.

⁷⁰ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 17.

Chapter 5: Griswold v Connecticut Case Study

CASE STUDY I: INTRODUCTION

The purpose of this thesis is to investigate how individuals are socialized as a result of disciplinary power being exercised through the network of the American legal system. Many people fail to understand their relationship with the judiciary because they view it as a punitive system rather than a mechanism to demand guaranteed protection under the law that reflects evolving societal circumstances. Additionally, the general public is likely unaware to the extent in which the government and specifically the judiciary has the ability to subconsciously penetrate and influence private familial life. It is important to understand the relationship between the judiciary and the American people because “at the most basic level” it “affects us personally” in regards to “intimate interpersonal relationships entailing our sexual conduct and family lives.”⁷¹ In order to pinpoint how and why the judiciary has the ability to influence private decision making, it is helpful to evaluate past case studies that have resulted in shifts in socialization.

The best cases to evaluate how the judiciary exercises disciplinary power through its net-like structure to socialize the American people involve issues regarding family affairs, in which the government is often seen to have little to no place. The 1965 Supreme Court case *Griswold v. Connecticut* is the perfect case study to evaluate the socialization effect that the judiciary has on the American people as a result of the interdependent exercise of disciplinary power through its net-like structure. This

⁷¹ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 3.

landmark case strove to establish familial privacy from government interference in regards to the use of contraceptives. The parties involved in this case had to exercise disciplinary power in their relations to the judiciary to move through the legal network to change cultural ideologies surrounding contraceptives. The Supreme Court ruled in favor of the defendant, establishing that privacy from the government exists under “penumbras” found throughout the Bill of Rights.⁷² The Supreme Court held that the defendants that brought this case to the surface demonstrated a necessary change in how individuals are socialized to perceive private relations between partners in the context of the law.

Although this case appeared to victoriously gain privacy, the penumbras under which privacy rights fall, have been unable to separate the judiciary completely from familial life. The inability to keep the judiciary out of private affairs may cause the legal system to appear coercive because it may not necessarily be what the people want. However, the judiciary “does not make the law...it guarantees it.”⁷³ Familial life will never be completely private from the judiciary because they are interdependent on one another. For example, in order to be protected from legislation or executive orders that could interfere with familial affairs, the people rely on the judicial branch of government. Since “law reflects changing social relations in the short run” the legal system must be present and accessible when shifts in societal ideologies need to be adapted or upheld in the future.⁷⁴ Ideologies will always shift as a result of the exercise

⁷² *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁷³ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 14.

⁷⁴ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 14.

of disciplinary power between independent members of an organization because social transactions continuously produce innovation of thought and action. This is evident through observing landmark court cases throughout history that reflect evolving societal values, norms, and ideologies established by the American people. The cases before and after *Griswold v. Connecticut* demonstrate how privacy laws have adapted to changing societal circumstances and how the judicial holdings continue to influence private decision-making and actions.

GRISWOLD V CONNECTICUT OVERVIEW

The executive director Estelle Griswold and the medical director Dr. C. Lee Buxton of Planned Parenthood League of Connecticut attempted to challenge a “Connecticut statute [that] makes it a crime for any person to use any drug or article to prevent conception” following the establishment of the organization. The association believed that the statute violated the Equal Protection Clause of the Fourteenth Amendment.⁷⁵ The case was brought to the judiciary twice by proponents of Planned Parenthood and dismissed each time for being unripe for review and lacking standing for jurisprudence. The directors finally decided to make a test case out of *Griswold v. Connecticut*. They resorted to intentionally breaking the law by offering their professional opinion on the use of contraceptives to those who sought after it in order for the case to be heard. The executive and medical directors “were convicted as accessories for giving married persons information and medical advice on how to

⁷⁵ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

prevent contraception and, following examination, prescribing a contraceptive device or material for the wife's use."⁷⁶

On March 29, 1965 the Supreme Court ruled in favor of the Planned Parenthood League of Connecticut executive and medical directors. In the majority opinion William O. Douglas held that "the Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights."⁷⁷ These zones of privacy can be found under the First, Third, Fourth, Fifth, Ninth, and Fourteenth amendments. The identification of these zones of privacy found in the Constitution illustrates how the people and the judiciary depend on one another to legally protect cultural shifts that influence how citizens internalize information. This is because individuals brought an issue that rose out of evolving social circumstances that the judiciary interpreted to mandate protection under the Constitution for all American citizens. These zones of privacy that have come to indirectly influence private decision-making after being unrecognized for an extended period of time exemplifies how the Constitution was structured by the Founding Fathers to be a living, breathing, adaptable document to meet the evolving needs of an evolving society.

The judiciary has played a critical role in the private lives of American citizens to varying degrees throughout history. It is beneficial to review how individuals made decisions and acted in the private sphere before and after a landmark court holding in the past to observe the socialization effect of jurisdiction. This is because, if the decision-making and actions change between the times that a case begins and after it

⁷⁶ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁷⁷ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

ends, the socialization effect that the court exercised through a disciplinary network is explicitly evident. This is because the socialization effect that results from court rulings is a direct product of the interdependent relationship between the individual that is either contesting or upholding a controversial issue. Political scientists Albert Melone and Allan Karnes explain, “societal norms prescribe power relationships among persons and institutions in society. Although many informal relationships exist that are dictated by custom and tradition, the law formalizes relationships with the full force of the state behind it. Children may be made to obey their parents. The rights and duties of parties in marriage are legally prescribed.”⁷⁸ Although the rights and duties of parties in marriage are legally prescribed and upheld by the judiciary, this prescription should evolve along with changing societal ideologies if the courts are to fulfill their constitutionally delegated duty.

GRSWOLD V CONNECTICUT: SOCIALIZATION THROUGH A DISCIPLINARY NETWORK

The course that the Supreme Court case *Griswold v. Connecticut* took throughout the American legal system exemplifies how citizens and the judiciary are interdependent on one another to generate shifts in socialization through a disciplinary network. The interdependence between *Griswold* and the courts demonstrates how disciplinary power was exercised in order to shift cultural ideologies surrounding the use of contraceptives from a legal standpoint. This is because before the Planned Parenthood directors took issue with the Connecticut statute forbidding contraceptives, the citizens of Connecticut were socialized to internalize the norm that contraception

⁷⁸ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 18.

was illegal. The internalization of contraception as illegal was an idea that was produced by social transactions that established a cultural ideology surrounding intimate affairs during a specific time. The establishment of this past cultural norm was an exercise of disciplinary power between networks of citizens and government that was upheld and guaranteed by the judiciary. However, this case reveals how that ideology evolved.

Supporters of Planned Parenthood spawned the shift in socialization that occurred surrounding the ideology of marital privacy and the use of contraceptives in the cases leading up to *Griswold v Connecticut*. Planned Parenthood attempted to overturn the Connecticut statute through the judiciary two times before experiencing success, which took over twenty years.⁷⁹ The first attempt to legalize contraception was made in 1943 by Planned Parenthood in *Tileston v. Ullman*, which traveled up to the Supreme Court through the appellate process. The appellant was Dr. Wilder Tileston and he claimed that the statute “would prevent his giving professional advice concerning the use of contraceptives to three patients whose condition of health was such that their lives would be endangered by child-bearing, and that the appellees, law enforcement officers of the state, intend to prosecute any offense against the statute and ‘claim or may claim’ that the proposed professional advice would constitute such an offense.”⁸⁰ Dr. Tileston feared that the statute would harm his patients if he abstained from giving his professional advice about the use of contraceptives.

⁷⁹ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 14.

⁸⁰ *Tileston v. Ullman*, 318 U.S. 44 (1943)

Upon this case reaching the Supreme Court, the justices “assumed without deciding that the case was an appropriate one for a declaratory judgment and ruled that the statutes ‘prohibit the action proposed to be done’ by appellant and are constitutional” and that the “state courts present no constitutional question which appellant has standing to assert.”⁸¹ The court ultimately dismissed the appeal made by Dr. Tileston. The denial by the Supreme Court to overturn the statute does not convey coercion or reflect an authoritarian rule. Rather, this case conveys the daunting process during which socialization occurs. The judiciary cannot hold in favor of whichever case arrives on its steps. There are generally repeated, well-constructed attempts, which convey to the judiciary that it must critically interpret the law in order to respond to evolving cultural circumstances and guarantee protection. If the Supreme Court were to preemptively rule in favor of controversial issues, it might ultimately end up oppressing more individuals than it is helping, which reflects qualities of an oppressive regime. Socialization reflects the ideologies of the majority because that majority establishes cultural norms. If the Supreme Court ruled in favor of the minority, it would not be reflecting predominant cultural values. If a case is not ripe and lacks standing to review, it suggests that it is too soon for a shift in socialization to occur.

The second attempt to alter ideologies surrounding contraception and marital privacy came about from the 1961 Supreme Court case *Poe v. Ullman*. Jane Doe brought this case after enduring a difficult first pregnancy and was informed that a second could be fatal, which led her to seek professional advice about the use of

⁸¹ *Tileston v. Ullman*, 318 U.S. 44 (1943)

contraceptives.⁸² Doe challenged the Connecticut statute that forbade her from gaining knowledge about the use of contraceptives, which limited her sexual freedom in her partnership. Once again, the Supreme Court dismissed the case because it was unripe and the parties lacked standing. Justice Frankfurter delivered the majority opinion, stating, “even were we to read the allegations to convey a clear threat of imminent prosecutions, we are not bound to accept as true all that is alleged on the face of the complaint and admitted, technically, by demurrer, any more than the Court is bound by stipulation of the parties. Formal agreement between parties that collides with plausibility is too fragile a foundation for indulging in constitution adjudication” because “this court can have no right to pronounce an abstract opinion.⁸³ He concludes, “this Court cannot be umpire to debates concerning harmless, empty shadows. To find it necessary to pass on these statutes now, in order to protect appellants from the hazards of protection, would be to close our eyes to reality.”⁸⁴ Justice Frankfurter’s opinion may appear to oppress the rights of Jane Doe and that may entirely be true in hindsight. If he were a unitary actor oppressing a single individual, it would be considered coercion. However, when the Supreme Court decides to hear and offer a decision on a single case, that decision becomes law and fact for every individual in the nation. When a socializing mechanism makes a decision, it must consider the expansive effect that decision may have. Consequently, the judiciary decides to only hear cases that hold standing and would establish a strong precedent that properly interprets the law to reflect shifts in socialization.

⁸² *Poe v. Ullman*, 367 U.S. 497 (1961)

⁸³ *Poe v. Ullman*, 367 U.S. 497 (1961)

⁸⁴ *Poe v. Ullman*, 367 U.S. 497 (1961)

It is evident that disciplinary power is being exercised between parties because an exchange of ideas occurs that generates thought to persuade action. It may appear that this social transaction is irrelevant because the case was dismissed but it is not because it establishes the foundation on which *Griswold v. Connecticut* was built. Socialization establishes norms, which is a long and tedious process because it alters how individuals internalize truth in their respective organizations. These individuals include both citizens and members of the courts. The interconnectedness between networks within the judiciary is illustrated by how the case traveled upwards through the appellate process. The decision by the Supreme Court not to hear the case demonstrates judicial restraint, which conveys the judiciary's dedication to only shift societal values, norms, and ideologies when it is necessary for jurisprudence to protect the evolving rights and liberties of society.

As the ideologies surrounding the use of contraceptives and private familial life evolved further, a socialization shift finally came about as a result of the Supreme Court's ruling in *Griswold v Connecticut*. Griswold gained traction for the case out of Justice John Marshall Harlan II's dissenting opinion in *Poe v. Ullman*.⁸⁵ The justice explained, "The full scope of the liberty guaranteed by the Due Process Clause cannot be found or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial

⁸⁵ Johnson, John W. (2005). *Griswold V. Connecticut*. University Press of Kansas. pp. Chapter 5.

arbitrary impositions and purposeless restraints.”⁸⁶ Justice Harlan suggests that the Supreme Court may have incorrectly dismissed *Poe v. Ullman* because evolving societal circumstances mandated a broader interpretation of the Due Process Clause of the Fourteenth Amendment in order to properly extend equal protection of the law to all citizens.⁸⁷

Justice Harlan’s dissenting opinion exemplifies interdependence between the judiciary and the people to perpetuate a shift in socialization. His opinion conveys how the ideologies of an evolving culture penetrate the judiciary through the appellate process to influence the decision making of members within the judicial network. His belief that the Supreme Court should have heard *Poe v. Ullman* shows the importance of precedent, highlighting how separate cases affect one another. Disciplinary power was exercised between the people and the judiciary to begin a socialization shift through the appeal of the Connecticut statute. However, in order for this shift in socialization to occur, the people involved had to work through the judicial network and endure the appellate process. This tedious process results in the judiciary responding to new ideologies by guaranteeing that the new status quo will be upheld. In regards to *Griswold v. Connecticut*, the Supreme Court holding that overturns the Connecticut statute results in new ideologies surrounding the use of contraceptives and marital privacy. Individuals within the nation begin to internalize this new norm, which demonstrates how the judicial branch of the government adopts the ability to socialize the American people.

⁸⁶ Johnson, John W. (2005). *Griswold V. Connecticut*. University Press of Kansas. pp. Chapter 5.

⁸⁷ Johnson, John W. (2005). *Griswold V. Connecticut*. University Press of Kansas. pp. Chapter 5.

Shortly following the dismissal of *Poe v. Ullman*, Griswold and Dr. Buxton opened a contraception clinic in New Haven Connecticut on November 1, 1961 with the intention of bringing about a new test case to appeal the Connecticut statute.⁸⁸ Women seeking professional medical opinions about the use of contraceptives instantly flooded the clinic to set up an appointment. These women represent evolving cultural perceptions circulating the topic of contraception and marital privacy. Griswold and Dr. Buxton were immediately arrested for breaking the law prescribed by the Connecticut statute on November 10, 1961 because “any person who assists, abets, counsels, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender” of the statute.⁸⁹ Consequently, the directors “were found guilty as accessories and fined \$100 each, against the claim that the accessory statute, as so applied, violated the Fourteenth Amendment.”⁹⁰

Griswold and Dr. Buxton appealed their conviction, upholding their belief that the Connecticut statute violated the Fourteenth Amendment of the Constitution.⁹¹ Their appeal shows how individuals work within the judicial network to exercise disciplinary power. This particular exercise of disciplinary power unveils truth behind whether the law was appropriately applied in the preceding case. The result of the decision either upholds the status quo, which prohibits a shift in socialization or the exercise of disciplinary power was successful and a shift in socialization occurs. In this appeal,

⁸⁸ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁸⁹ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹⁰ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

“The Appellate Division of the Circuit Court affirmed the decision of the inferior court” and “The Supreme Court of Errors affirmed that judgment.”⁹²

The case was appealed to the United States Supreme Court and a decision was rendered on June 7, 1965 that reversed Conn. 544, 200 A.2d 579.⁹³ Justice William O. Douglas delivered the majority opinion on behalf of the Supreme Court and claimed, “we think that appellants have standing to raise the constitution rights of the married people with whom they has a professional relationship.”⁹⁴ The reason *Griswold .v Connecticut* was successful and previous cases were not is likely because Griswold was not asking the court for a declaratory judgment.⁹⁵ This small fact explains why the previous cases failed to gain standing and were perceived to be unripe for adjudication. It also shows why working within the scope of the structure of a network is absolutely imperative to exercise disciplinary power to generate a shift in socialization.

Justice Douglas clarifies why previous cases failed to gain standing by explaining, “in that situation, we thought that the requirements of standing should be strict, lest the standards of ‘case or controversy’ in Article III of the Constitution become blurred.”⁹⁶ If the Supreme Court were to hear cases that failed to work in accordance with the law, it would be difficult for the courts to guarantee the law that it either upholds or overturns because it would not have been made in pursuance to the Constitution. In contrast with previous cases, the appellants in *Griswold v. Connecticut* had standing because “those doubts are removed by reason of a criminal conviction for

⁹² *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹³ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹⁵ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹⁶ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

serving married couples in violation of an aiding-and-abetting statute. Certainly the accessory should have standing to assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime.”⁹⁷ The issue with the previous cases was not the content. The problem with gaining standing resided in the fact that the individuals contesting the Connecticut statute did not appropriately exercise disciplinary power through a network.

Upon explaining how the Supreme Court drew a conclusion, Justice Douglas states, “we do not sit as a super-legislature to determine wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician’s role in one aspect of that relation.”⁹⁸ The law entails several aspects that are not explicitly stated because it permits the law to be flexible to adapt to evolving societal values, norms, and ideologies. He continues, “the present case, then, concerns a relationship lying within the zones of privacy created by several fundamental constitutional guarantees.”⁹⁹ The guarantee of privacy in familial life from the government is provided to the people through the judiciary. Although the government is restricted from interference with private matters, the judiciary establishes structural standards and guidelines for how individuals are to make decision and act within the guidelines prescribed by the law.

Justice Douglas concludes, “Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a governmental purpose to control or

⁹⁷ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹⁸ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

⁹⁹ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

prevent activities constitutionally subject to regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms”.¹⁰⁰ The twenty-four year course that *Griswold v Connecticut* took through the judiciary to successfully change how Americans are socialized to view the use of contraceptives exemplifies disciplinary power being exercised through the judicial network. Connecticut citizens worked interdependently with members of the judiciary and exercised disciplinary power to unveil truth behind the legality of contraception. Following the decision of this landmark case, the American people no longer view contraception as illegal and it has become a norm across the country. The absence of a judicial network for disciplinary power to be exercised may have impeded or further prolonged the upheaval of outdated legislation, which failed so guarantee actions made in pursuance to evolving cultural ideologies.

¹⁰⁰ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

Chapter 5: *Whole Woman's Health v Hellerstedt* Case Study

CASE STUDY II: INTRODUCTION

The socialization effect that results from an exercise of disciplinary power through the net-like structure of the judiciary in relation to the public is observable in the previous case study between Planned Parenthood League of Connecticut and the United States Supreme Court. This is because the American people likely internalized information about contraception differently before and after the court rendered a decision on its legality, which was a response to shifting cultural ideologies. In concurrence to the previous case study, it is beneficial to evaluate the socialization process as it is currently traveling through the American legal network. This is because a contemporary example permits a more thorough analysis of the results from specific incremental interactions between the judiciary and the people as a shift in a societal ideology works its way through the judicial network. Additionally, this secondary analysis elucidates the ongoing interdependence between the American people and the judiciary, which results from continually changing cultural circumstances that need to be legally upheld or overturned to govern all citizens in accordance to evolving societal values, norms, and ideologies.

Immediately following the jurisdiction in *Griswold v. Connecticut*, federal law prescribed that the right to privacy exists under “zones” that produce “penumbras” and “emanations” to protect familial affairs from government interference.¹⁰¹ However, citizens have brought and continue to bring countless familial privacy cases involving contraception and abortion to the judiciary to this very day. This is because “still, after

¹⁰¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

40 years, this basic right – among the most contested and controversial of all rights protected by our Constitution – is layered with myriad limitations and qualifications.”¹⁰² These subsequent cases demonstrate how citizens turn to the legal system to overturn outdated holdings to guarantee themselves protection from government interference. Past holdings become outdated from continual shifts in socialization, which results from social transactions that travel through disciplinary networks to alter the public perception of controversial private affairs.

Comparable cases that follow up seemingly well-addressed controversies exemplify why “sociological jurists note how law reflects changing social relations in the short run.”¹⁰³ These scholars are reinforcing how the judiciary is eagerly responsive to the eternally evolving manner in which individuals produce societal values, norms, and ideologies through social transactions. In other words, culture influences jurisprudence, which reflects interdependence between the people and the judiciary to exercise disciplinary power through the legal network to interpret and guarantee the law, by which the governed and governors must abide. This interpretation helps explain why the judiciary is the most direct and accessible outlet for the general public to alter the law to reflect large-scale shifts in socialization. Together, the people and the “legal system makes temporarily satisfying solutions” to reflect currently shared cultural ideologies established and perpetuated by socialization.¹⁰⁴ This phenomenon is reflected

¹⁰² *Lakey*, 46 F. Supp. 3d, 676 (W.D. Tex. 2015)

¹⁰³ Melone, Albert P., and Allan Karnes. *The American Legal System: Perspectives, Politics, Processes and Policies*. Lanham, MD: Rowman & Littlefield, 2008. Print. 14.

¹⁰⁴ Levesque, Roger J. R. “Discrimination, developmental science, and the law: Addressing dramatic shifts in civil rights jurisprudence.” *American Journal of Orthopsychiatry*, Vol 84 (1), 2014, 26.

by how the judiciary addresses similarly controversial issues over an extended period of time.

Issues surrounding female autonomy were brought to the forefront of conversation by women's rights activists in the cases preceding *Griswold v. Connecticut* and exacerbated in *Roe v. Wade*, which overturned a Texas statute that forbade the termination of pregnancies in 1973.¹⁰⁵ These two landmark cases have perpetuated controversial cases about female autonomy into the judiciary well into the twenty-first century as a result of how dialogue and perception influence action. The most recent case to travel through the judicial network regarding female autonomy is *Whole Woman's Health v. Hellerstedt*, which was originally filed on April 2, 2014 in the state of Texas but remains undecided by a divided Supreme Court with a vacant seat.¹⁰⁶ Since the status of the case is undecided, Texas measure, House Bill 2 (HB2), which increasingly limits the accessibility of abortion clinics, remains upheld under the jurisdiction of the U.S. Court of Appeals of the Fifth Circuit. However, if HB2 were to be found unconstitutional by the Supreme Court, the socialization effect of their jurisdiction would become explicitly evident. This is because federal law would guarantee protection from government interference in private affairs as a result of the exercise of disciplinary power through the judicial network that legally upholds a national cultural shift in socialization.

The course that this case has taken through the appellate process reveals the extremity of the interdependence between the people and the judiciary to exercise disciplinary power to interpret the law and guarantee protection from government

¹⁰⁵ *Roe v. Wade*, 410 U.S. 133 (1973)

¹⁰⁶ *Whole Woman's Health v. Hellerstedt*, U.S. (2016)

interference in zones of privacy. The most accessible way for pro-choice proponents to guarantee protection from government interference to emanate this socialization shift is to engage the judicial network through the exercise of disciplinary power. Cultural shifts in socialization may occur externally from the judiciary. However, the evolving internalization of information that influences action that is associated with cultural shifts is not guaranteed protection from government interference without being reflected by the law, which is most accessibly changed by the people working hand and hand with the judiciary. This logic explains the complete socialization effect of the judiciary and why pro-choice activists specifically turned to the legal system to guarantee protection from government interference in regards to female autonomy in *Whole Woman's Health v. Hellerstedt*.

WHOLE WOMAN'S HEALTH V HELLERSTEDT OVERVIEW

Texas legislators passed HB2 on July 18, 2013 with a fully effective implementation date of October 31, 2013.¹⁰⁷ Legislators intended the partisan “Bill to be enacted an act relating to the regulation of abortion procedures, providers, and facilities; providing penalties...by the legislature of the state of Texas” because “the state has a compelling state interest in protecting the lives of unborn children” as long as the act “does not impose an undue burden or substantial obstacle on a woman’s ability to have an abortion.”¹⁰⁸ Texas legislators claimed HB2 would provide safer abortion clinics in which the integral human rights of the unborn child and woman

¹⁰⁷ United States. Cong. House. *Legislature of the State of Texas. Relating to the Regulation of Abortion Procedures, Providers, and Facilities; Providing Penalties*. 83 Cong., 2nd Sess. HR 2.

¹⁰⁸ United States. Cong. House. *Legislature of the State of Texas. Relating to the Regulation of Abortion Procedures, Providers, and Facilities; Providing Penalties*. 83 Cong., 2nd Sess. HR 2.

seeking an abortion would be better upheld than they have been in the past. They claimed safety would be improved because the time frame for women seeking an abortion would be expatiated through an extended information process, medics would be required to obtain privilege to practice in abortion clinics from hospitals in close proximity, and clinics would need to modify their centers to meet the same standards of ambulatory surgical facilities.¹⁰⁹

The passage and implementation of HB2 “has resulted in the closure of nearly 75 percent of the [abortion] clinics in the state of Texas since 2013, forcing some women to drive up to 300 miles one-way to obtain a safe and legal abortion.”¹¹⁰ Whole Woman’s Health turned to the Center for Reproductive Rights to file a lawsuit on April 2, 2014 “on behalf of five Texas clinics and three physicians and their patients, challenging the ASC and admitting privilege requirements” because “the restrictions create barriers to safe and legal abortions that unduly burden women’s right to access abortion service” which is “in violation of the 14th Amendment to the U.S. Constitution.”¹¹¹ The case traveled through the federal district trial court (overturned HB2), U.S. Court of Appeals for the Fifth Circuit (upheld HB2), and ultimately arrived for jurisdiction in the Supreme Court on June 29, 2015 (decision pending, currently 4:4).¹¹²

WHOLE WOMAN’S HEALTH V HELLERSTEDT: SOCIALIZATION THROUGH A DISCIPLINARY NETWORK

¹⁰⁹ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹¹⁰ “Whole Woman’s Health v Hellerstedt.” *Whole Woman’s Health LLC*. Web.

¹¹¹ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹¹² “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

The course that the Supreme Court case *Whole Woman's Health v. Hellerstedt* has taken through the appellate process reinforces how the structure of the legal system establishes a network for the people and the judiciary to collectively exercise disciplinary power, which has a socialization effect on the perception of abortion across the nation. The judiciary provides a forum for opponents and proponents of HB2 to have their voices heard to influence action through judicial persuasion of the interpretation of the law. A decision about the legality of the measure is influenced by the exercise of disciplinary power between parties, current cultural circumstances, and the law. The upholding of HB2 after the case traveled through the U.S. District Court for the Western District of Texas Austin Division and the U.S. Court of Appeals for the Fifth Circuit may suggest the absence of a public perceptual shift on the issue of abortion accessibility. However, referring back to the discussion about how socialization exists in tiers that represent increasingly expansive communities, inferior courts are representative and responsive to the communities that they serve. In regards to this case, the district court and the appellate court likely upheld HB2 because their jurisdiction reflects the cultural values, norms, and ideologies of the Texas communities in which they interpret the law. Therefore, it is beneficial to evaluate the exercise of disciplinary power through the judicial network, as it is evident in each phase of the appellate process in *Whole Woman's Health v. Hellerstedt* in order to analyze the socialization effect jurisprudence of varying degrees may have.

The trajectory of nine out of ten abortion clinics closing as a result of HB2 compelled the Center for Reproductive Rights to work closely with Whole Woman's

Health to file a lawsuit against the state of Texas on April 2, 2014.¹¹³ The controversy was originally addressed in the district court as pro-life legislators stood firm and outrage spread amongst pro-choice supporters. Whole Woman’s Health claimed that HB2 was designed “under the pretext of protecting women’s health and safety” but the “medically unnecessary regulations...make it vastly more difficult, if not impossible, to obtain safe and legal abortion care.”¹¹⁴ This accusation was echoed by the “American Medical Association, the American College of Obstetricians and Gynecologists and other leading health care experts” who are united in “opposing these burdensome regulations” because “they serve no medical purpose...and do not promote women’s health.”¹¹⁵ Whole Woman’s Health founds their legal argument in the fact that “HB2 punishes women for their decision to exercise their constitution right to end a pregnancy” and places an “undue burden” on women, which is prohibited by *Planned Parenthood v. Casey*.¹¹⁶

On August 29, 2014 the federal district court “blocked enforcement of the measures...finding both requirements, independently and collectively, impose an unconstitutional undue burden on women’s access to abortion” when dually applied.¹¹⁷ The court’s “incorporating findings of fact and conclusions of law” holds, “the admitting-privileges requirement, as applied to the McAllen and El Paso clinics, violates the Due Process Clause of the Fourteenth Amendment with regard to women in the Rio Grande Valley and West Texas and the ambulatory-surgical-center requirement,

¹¹³ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹¹⁴ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹¹⁵ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹¹⁶ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹¹⁷ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

facially in regard to all Texas women and, as applied to the McAllen and El Paso clinics specifically, with regard to women in the Rio Grande Valley and West Texas, violates the Due Process Clause of the Fourteenth Amendment.”¹¹⁸ This holding explicitly states how HB2 violates the Due Process Clause in relation to women in specific regions of Texas, which illustrates how district courts guarantee protection from government interference in relation to the individual communities over which they have jurisdiction. In other words, the holding of the district court in this particular case is influenced by and has a socialization effect solely on the Western District of Texas, which results from exchanges in disciplinary power at the fray of the judicial network.

The documented report of the district holding expresses how a decision was arrived upon through the exercise of disciplinary power and interdependence between the people and the judiciary. The report states, “The Court has observed the demeanor of the witnesses and has carefully weighed that demeanor and the witness’ credibility in determining the facts of this case and drawing conclusions from those facts. Further, the court has thoroughly considered the testimony of both sides’ expert witnesses and has given appropriate weight to their testimony in selecting which conclusions to credit and upon which not to rely.”¹¹⁹ Since the plaintiff and defended waived a trial by jury, “(Garcia v. Kerry, 557 Fed. Appx. 304, 309 (5th Cir. 2014)) it is settled law that the weight to be accorded expert opinion evidence is solely within the discretion of the judge sitting without a jury.”¹²⁰ In summarization, this memorandum explains how jurisdiction was arrived upon by the act of a judge evaluating the “demeanor” in which

¹¹⁸ *Lakey*, 46 F. Supp. 3d, 676 (W.D. Tex. 2014)

¹¹⁹ *Lakey*, 46 F. Supp. 3d, 676 (W.D. Tex. 2014)

¹²⁰ *Lakey*, 46 F. Supp. 3d, 676 (W.D. Tex. 2014)

the plaintiffs and defendants presented their cases, which is a procedure established by precedent. This process reflects the interdependence between the people and the judiciary to exercise disciplinary power to unveil their shared values, to which the law is interpreted. Additionally, the constant citing of cases that have established precedent reinforces the net-like organization of the judiciary because courts of varying jurisdiction depend on precedent to influence contemporary decisions. Finally, the rhetoric describing the upheaval of HB2 by the federal district court explains how the decision is most appropriate for those regionally affected by the holding, which demonstrates the local socialization consequence of district jurisdiction.

State of Texas officials immediately appealed the district court holding that revised HB2 to the U.S. Court of Appeals of the Fifth Circuit, “seeking declaratory and injunction relief against the enforcement of recent amendments to Texas’s law regulating abortions.”¹²¹ The appellate court held, “HB2 and its provisions may be applied throughout Texas, except that Supreme Court precedent requires us to partially uphold the district court’s injunction of the ASC requirement as applied to the Whole Woman’s Health abortion facility in McAllen, Texas, and to uphold the district court’s injunction of the admitting privileges requirement.”¹²² This holding explains how courts continue to be responsive to the communities affected by jurisdiction while a case travels through the appellate process and receives disparate opinions. The jurisprudential background for the decision rendered by the appellate court explains, “so that our decision may benefit from a full understanding of the pertinent historical and jurisprudential context, we begin by reviewing the regulation of abortion and relation to

¹²¹ *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

¹²² *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

Supreme Court cases” and “with this history in mind...we addressed the constitutionality of the admitting privileges requirement in HB2.”¹²³ This rhetoric utilized to describe the influential role of jurisprudential background in interpreting the law in contemporary circumstances highlights the interconnectedness of courts of varying jurisdiction. A jurisprudential network is evident in this case because although the appellate court overturned the holding of the district court, it maintained the integrity of the interpretation of the law as applied over the region in which the district court maintains jurisdiction.

Whole Woman’s Health attempted to convince the appellate court that HB2 “imposed an undue burden on a significant number of women.”¹²⁴ However, “to sustain a facial challenge, the Supreme Court and this circuit require Plaintiffs to establish that the law itself imposes an undue burden on at least a large fraction of women,” which the court claims, that “plaintiffs have not done so here.”¹²⁵ The court explains, “the challenged provisions were upheld because even the less deferential, large-fraction test was not satisfied” because only “16.7% or 1/6 of women of reproductive age would face travel distances of 150 miles or more,” which is not an “undue burden” because *Planned Parenthood v. Casey* establishes that women may travel up to 300 miles before distances becomes a substantial barrier to accessing abortion consultation and procedures.¹²⁶ Recall that the role of the judiciary is to interpret the law in cultural contexts, which reflects a socialization effect. Socialization occurs through shared values that are established by the majority of independent members of an organization

¹²³ *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

¹²⁴ *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

¹²⁵ *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

¹²⁶ *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

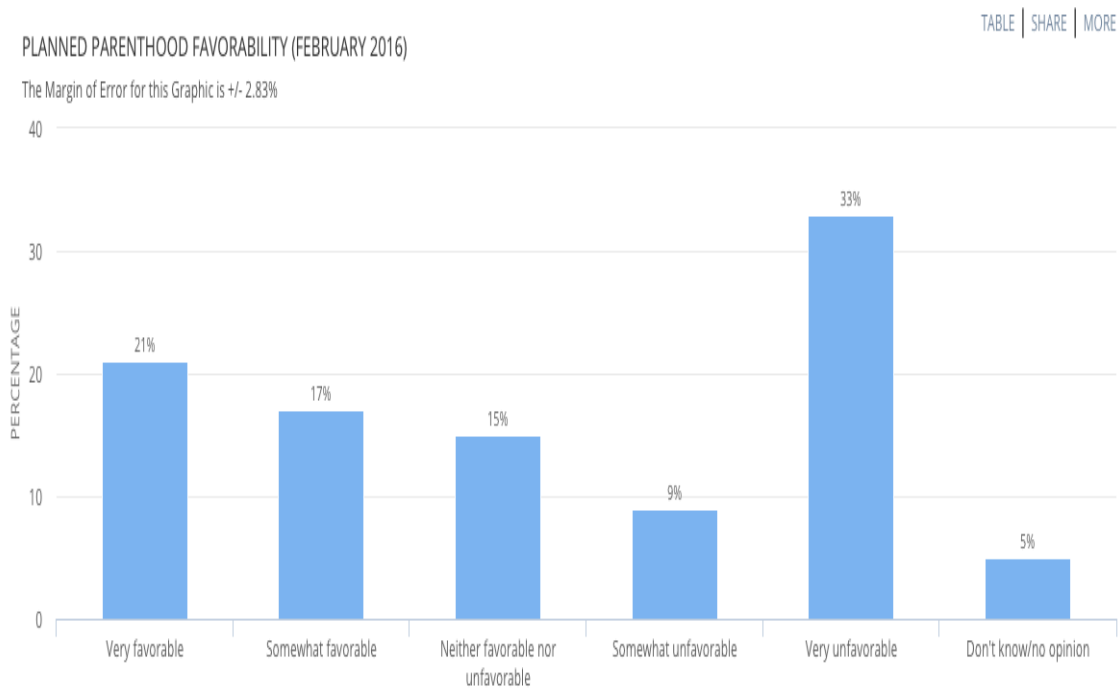
as a result of exercising disciplinary power. If the appellate court truly believed that HB2 enhanced the health care of more women than those that face a unsubstantial burden, the ruling was made in accordance to the theory presented in this thesis even though it does not uphold the same jurisdiction of the federal district court.

In the federal level district court, Whole Woman’s Health was successful in exercising disciplinary power to unveil truth behind the illegal perception of HB2 in the community in which that court has jurisdiction. However, the legislators successfully exercised disciplinary power between themselves and the judiciary to convey the cultural necessity of the restrictions on abortion clinics as the case progressed through the appellate process. The result of the exercise of disciplinary power by the legislators unveiled how the legal health benefits in HB2 outweighed an unsubstantial burden for a minority of women, which by definition reflects the norms established by socialization throughout the greater majority of Texas. The conflicting holdings between the two Texas courts may suggest that a cultural shift in socialization is, in fact, not making its way through the judicial network. However, this appellate process simply reveals the importance of a network in which disciplinary power influences decision-making at appropriately varying degrees of jurisdiction because of the broadening socialization effect at each phase of the appellate process. The architects of the judicial network echo how the appellate courts were designed to protect from “the corrupters of public opinion,” which reinforces the interdependence between cultural ideologies and the judiciary.¹²⁷ Without an appellate process, the judiciary may not be as accessible of a socializing agent for the people to guarantee the protection of cultural values. The

¹²⁷ Kathryn Turner. “Federalist Policy and the Judiciary Act of 1801.” *William and Mary Quarterly*, 3rd ser., 22(January 1965): 3-32.

importance of the judicial network and the appellate process becomes explicitly evident upon turning to regional and national polling data on whether abortions should be readily available or not, as prescribed by state and federal law.

Figure 6: Planned Parenthood Favorability Throughout Texas (2016)



The above chart illustrates that 38 percent of citizens polled throughout the state of Texas in 2016 were favorable of Planned Parenthood and 42 percent were not, while 20 percent remained undecided. Since Planned Parenthood offers comparable services to all abortion clinics throughout Texas, it is reasonable to predict that those who polled favorably and unfavorably would poll similarly if they were asked specifically about the restrictions prescribed by HB2.

The role of the district and appellate court in this case was to interpret the legality of HB2 in context of the current cultural circumstances of the specific regions over which each has jurisdiction. The cultural circumstances that influence jurisdiction are established by the exercise of disciplinary power between independent members of an organization that collectively produce public opinions that penetrate jurisprudence

¹²⁸ *Planned Parenthood Favorability*. Digital image. *The Texas Politics Project*. University of Texas at Austin, 2016. Web.

within the judicial network. The Texas poll, reflecting that the majority of the citizens would likely view restrictions on abortions favorably, suggests an appropriate interpretation of the law in accordance to statewide cultural values, norms, and ideologies by the court of appeals. The reason the district court and the appellate court may have interpreted the legality of HB2 differently under the same state and federal laws may result from disparate public opinions of the respective regions over which each resides.

This rationale is reinforced in the opinion of the appellate court, which reflects Texas public opinion as a whole when it excludes distance as an undue burden because women in Western Texas have reasonable access to abortions in Santa Teresa, New Mexico.¹²⁹ However, *Whole Women’s Health* expresses that women of Western Texas believe they should be able to exercise their constitutional right to access abortion consultations and procedures within the state in which they reside because HB2 was signed into law under the pretext that it enhances the reproductive health care of women.¹³⁰ Upon reaching the Supreme Court, Justice Ginsburg agrees with the plaintiffs, explaining, “New Mexico doesn’t have any surgical – ASC requirement, and it doesn’t have any admitting requirement. So if your argument is right, then New Mexico is not an available way out for Texas because Texas says to protect our women, we need these things.”¹³¹ Additionally, the clinics claim, a “de facto barrier” disproportionately affects women seeking abortion consultation and procedures in the District of Western Texas because “women in poverty face greater difficulties,” which

¹²⁹ “*Whole woman’s Health v. Hellerstedt.*” *Center for Reproductive Rights*. Web.

¹³⁰ “*Whole woman’s Health v. Hellerstedt.*” *Center for Reproductive Rights*. Web.

¹³¹ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

makes up a “large fraction” of women in this region, excluding large metropolitan areas.¹³² Therefore, it is evident that the ruling of the federal district court was made in accordance to the interests and public opinion of women residing in the Western District of Texas.

When evaluating the public opinion poll in relation to the rhetoric implemented in the court holdings, the interdependence between the people and the judiciary to exercise disciplinary power to influence jurisdiction, which has a proportional socialization effect, becomes clear. This is because the jurisprudence of each court was influenced by the public opinion of the region over which they hold jurisdiction and intend to guarantee protection from government interference with female autonomy. This relationship can be viewed as a reciprocal relationship of social transactions to reveal the cultural values, norms, and ideologies of the community over which a court resides, in order for the people and the judiciary to collectively establish the standards by which every member of that organization must abide. This production of conformity of thought between the people and the judiciary is produced through the exercise of disciplinary power and actions made in pursuance to this rational decisional model are guaranteed protection by the judiciary. This socialization effect occurs at proportional levels by varying degrees of jurisdiction throughout the judicial network. This observation refers back to how each tier of the judiciary has a more expansive socialization effect. Therefore, jurisdiction may need to take into account the appropriate regional cultural values of the network over which a holding influences a cultural socialization effect.

¹³² *Whole Woman’s Health v Hellerstedt*, 284 F. Supp. (5th Cir. 2014)

Following the upholding of HB2 by the 5th Circuit, Whole Woman’s Health “filed a petition for a writ of certiorari on September 2, 2015” and “the U.S. Supreme Court granted cert in November 2015.”¹³³ Whole Woman’s Health sought the writ because “‘personal decision relating to marriage, procreation, contraception, family relationships, child rearing, and education’ are ‘central to the liberty protected by the Fourteenth Amendment’ (Obergefell v. Hodges, 135 S. Ct. 2584, 2597-98 (2015)).”¹³⁴ Network theory describes how networks establish guidelines and standards under which individuals are free to make decisions about familial affairs, as long as the standards are met, which, in this case, are established by preceding jurisdiction surrounding the accessibility of abortions.

The writ was granted because the “Fifth Circuit’s decision is in direct and acknowledged conflict with decisions of the Seventh and Ninth Circuits and the Iowa Supreme Court” and stands “in conflict with *Casey* and other relevant decisions of this Court.”¹³⁵ The conflicting holdings between circuit courts resulted from an exercise of disciplinary power traveling through the appellate process within the judicial network. Such a significant number of individuals across the nation share the ideology that restrictions on abortions place an undue on women, that several circuit courts have guaranteed their constitutional right from governmental interference. In terms of the theory presented in this thesis, this process explicitly demonstrates how the people have the ability to generate and perpetuate a shift in socialization through the judicial

¹³³ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹³⁴ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹³⁵ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

network, which landed *Whole Woman's Health v. Hellerstedt* in the Supreme Court on March 2, 2106.¹³⁶

Due to the incomplete status of this case, the transcript of oral arguments before the Supreme Court is the most up-to-date legal document to analyze how a shift in socialization is reflected throughout the judicial network as a result of the exercise of disciplinary power. The plaintiffs conclude their opening arguments by claiming, “if you find that this law is upheld, what you will be saying is that this right really only exists in theory and not in fact, going foreword, and that the commitments that this Court made in Casey will not have been kept.”¹³⁷ The plaintiffs believe that the upholding of HB2 would fail to reflect a shift in socialization that has been established through the judicial network by precedent. The respondents claimed, “abortion is legal and accessible in Texas” because “90 percent of Texas women of reproductive age live within 150 miles of an open clinic” even after the implementation of the restrictions prescribed by HB2.¹³⁸ Upon the submission of oral arguments after the plaintiffs and defendants responded to scrupulous questioning, the Supreme Court Justices were left to weigh the intent of the legislators with the effect the HB2 has upon “hundreds of thousands of women” not “only in Texas but across the nation.”¹³⁹¹⁴⁰

Although the vacant seat on the Supreme Court has left the justices in a four to four gridlocked decision, the theory presented in this thesis offers speculation about the prospective holding, based on the appellate process this case has taken through the

¹³⁶ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

¹³⁷ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹³⁸ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹³⁹ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁴⁰ “Whole woman’s Health v. Hellerstedt.” *Center for Reproductive Rights*. Web.

judicial network. The inferior courts that delivered jurisdiction on this case ruled in accordance to an interpretation of the law in regards to the respective regions over which each holds jurisdiction. However, when a case reaches the Supreme Court and a holding becomes fact and law across the nation, jurisprudence becomes influenced by national cultural values, norms, and ideologies, which may very well diverge from state values and how those values influence jurisdiction in inferior court rulings. Public opinion has been well established to influence jurisprudence in courts of all levels because their role is to guarantee citizens protection under the law. Therefore, it is beneficial to analyze the stark difference between Texas and National public opinion polls about the favorability of accessibility to abortion clinics to speculate how the Supreme Court may rule.

The Wall Street Journal and National Broadcasting Company conducted a public opinion poll about whether citizens across the nation are favorable or unfavorable on the topic of the accessibility of abortions in 2013. The results, 54 percent in favor of access to legal abortions, 44 percent opposed, and 2 percent undecided, represent a shift in socialization about how individuals across the country internalize the controversy over the accessibility of abortions.¹⁴¹ This shift is evident because this is the “first time since this poll question was first asked in 2003 that a majority maintained that abortion should be legal. Previously, with just one exception in 2008, majorities said abortions should be illegal.”¹⁴² If this trend has continued over the past three years since the poll

¹⁴¹ Mosbergen, Dominique. “Majority of Americans Believe Abortion Should Be Legal 40 Years After Roe v. Wade.” *The Huffington Post* 22 Jan. 2013. Web.

¹⁴² Mosbergen, Dominique. “Majority of Americans Believe Abortion Should Be Legal 40 Years After Roe v. Wade.” *The Huffington Post* 22 Jan. 2013. Web.

was conducted, it is reasonable to assume that this socialization shift surrounding the controversial issue of abortions has increased favorability.

If the role of the legal system at each level is to interpret the law in context of the community over which they hold jurisdiction, the theory presented in this thesis helps explain why the courts ruled differently throughout the appellate process and the implications of those holdings on the general public. Referring back to the first poll presented, the majority of citizens polled in Texas were unfavorable of abortion accessibility, which is reflected by the holding by the Fifth Circuit. However, national public opinion on the topic of abortions diverges from that of the general consensus in Texas. This is because the majority of the nation has already experienced a cultural shift on the controversy, while Texas maintains an ideology about abortions on the lesser progressive side of the shift.

The results of the state and national polls in correlation to the jurisprudence at varying levels in *Whole Woman's Health v. Hellerstedt* are particularly interesting in context of this thesis for a few reasons. First, the state public opinion poll aligns with the upholding of HB2 by the Fifth Circuit because the majority of Texans view abortion clinics unfavorably. Second, the national poll reflects the gridlock in the Supreme Court and how the justices are equally divided on the legality of the restrictions placed on abortion clinics. Although the national poll shows that the majority of Americans are favorable of having accessibility to abortion consultation and procedures, the numbers are still relatively divided. Due to their role of interpreting a fluid law in regards to evolving social circumstances, justices are likely aware of the socialized culture surrounding the controversial issue about the accessibility to abortions and are

interpreting the law in accordance to current ideologies. The course that this case has taken through the judicial network to where it stands today reflects the necessity of the appellate process, which structurally permits the individual exercise of disciplinary power to generate and perpetuate socialization shifts through the American legal system.

WHOLE WOMAN'S HEALTH V HELLERSTEDT: LIMITATIONS TO SOCIALIZATION IN ABSENCE OF A DISCIPLINARY NETWORK

The theory presented in this thesis establishes that large-scale shifts in socialization can be generated and perpetuated by the general public exercising disciplinary power between themselves and the American legal network. This is because shifts in socialization often occur through the exercise of disciplinary power in networks and the net-like structure of the judiciary permits disciplinary power to be interdependently exercised to have legitimate cultural shifts reflected and guaranteed protection from governmental interference by the law. Network theory explains how networks contribute to conformity of thought and action. The counterfactual suggests that the absence of a network for disciplinary power to be exercised is more conducive for disparate ideologies to produce conflicts of interests between members of an expansive organization. This conflict of interests between individuals in a single network inhibits the exercise of disciplinary power *between* independent members and establishes a forum for the exercise of the dimensional model of power of members *over* others. The absence of a structural network connecting the people to a branch of government may inhibit large-scale shifts in socialization to occur through that branch due to the lack of a formal forum for disciplinary power to be exercised between the

people and the government. This analysis of what occurs in the absence of a disciplinary network helps explain why citizens often turn to the judicial branch of government when they desire large-scale cultural shifts to be reflected and guaranteed by the law. It also explains how and why *Whole Woman's Health v. Hellerstedt* traveled through the appellate process and arrived at the steps of the Supreme Court.

After exhausting every social and political outlet to voice concern to elected officials that should ideally legislate in the objective interest of their constituents, opponents of HB2 turned to the judiciary. In this particular case, the legal system was the most accessible outlet for pro-choice activists to guarantee protection from government interference for women to exercise their Constitutional right to receive abortion consultation and procedures without having to endure an undue burden. This is because there is no formal network between the people and the legislators and executive to exercise disciplinary power to have evolving perceptions of abortion consultation and procedures reflected in the law.

The forums for the people to exercise disciplinary power between themselves and the legislative or the executive branches are far more limited than they are between the people and the judiciary. This is because the legislature and executive operate within a network that is not necessarily interdependent on the people to carry out their function in the same way that the judiciary relies on the people to fulfill its intended purpose. Although legislators and executives depend on the people for election, they are not required to interdependently exercise disciplinary power with the people once elected because they are delegated authority to use their best judgment to legislate. This is because in order for a legislator or executive to be elected, the majority of people must

consensually delegate authority to that individual because they present the fewest conflicts of interest between themselves and the majority public opinion out of each candidate. Although the election process can exemplify aspects of disciplinary power, once elected, legislators and executives are delegated “legitimate directive” to establish their personal and political agendas, which may not reflect evolving cultural ideologies due to the lack of a network between the governed and governors.¹⁴³ The absence of interdependence between the people and these two branches of government may impede the production of shared ideologies, which could create a conflict of interest between the people and the government. Recall that disciplinary power cannot be exercised where there is a conflict of interests because this type of relational power embodies the dimensional model of power, which means the interests of one party, prevails *over* another. Since there is no formal network for the general public to exercise disciplinary power to arrive upon shared values, norms, and, ideologies with legislators and executives, the people must resolve disputes through the judiciary.

It is important to note that legislators or executives theoretically could maintain interdependence on the people they represent but it is not required to carry out their function, as it is for the judiciary. This is because legislators and executives could theoretically engage their constituents but they are not required to be equally accessible to them as the judiciary is required in order to fulfill its function. Members of the legislative and executive branches have gained a reputation for making decisions based on whether it will lose or gain them popularity in public polls rather than legislating in the best interest of the communities they represent in order to continue advancing their

¹⁴³ Baumgold, Deborah. “Social Control & Power”. Political Power, Influence, and Control Class. 14 July 2014. Lecture.

personal and political agendas.¹⁴⁴ The desire to perform well in public opinion polls and gain reelection could explain why Texas legislators initiated HB2 and are standing firm on restricting access to abortion. Although public opinion is relevant to jurisprudence and may have influenced the appellate court's jurisdiction in this case, the structural judicial network permits that holding to be contested through the appellate process up to the Supreme Court, which prevents coercion. This is because the appointment of Supreme Court Justices allows HB2 to have its legality interpreted by judges that are intended to impartially evaluate and apply the law.

The difference between the judiciary and the legislature taking public opinion into account is that the judiciary uses cultural context for jurisprudence to guarantee the law, while legislators are able to use public opinion to manipulate personal and political agendas, which may actually infringe extending protection of the law to their constituents. While judges are also elected, they are required to interpret the law and public opinion in respect to the "demeanor" of the litigators, as described in the opinion delivered by the federal district court. This demeanor that bridges the law and public opinion illustrates how the judiciary is the most accessible forum for the general public to have shifts in cultural values reflected in the law. Additionally, the appellate process permits cases that reflect large-scale shifts in socialization to reach the Supreme Court, to which justices serve life tenure and, therefore, theoretically and ideally presents fewer conflict of interests between themselves and the people than judges in inferior courts or legislators and executives.

¹⁴⁴ Farnsworth, Ward. "The Ideological Stakes of Eliminating Life Tenure." *Harvard Journal of Law & Public Policy*, 29.3 (2006): 879-889.

This rationale helps explain how the inability to exercise disciplinary power with legislators and executive led Whole Woman’s Health to exercise disciplinary power through the legal network to protect the constitution right to receive abortion consultation and procedures, which is a right that obtained legal protection through a previous shift in socialization. Whole Woman’s Health writes in a publication, “we are looking to the Supreme Court to continue their decades-long legacy of protecting the right to legal abortion care without the undue burden of unnecessary hoops and hurdles” that “do nothing to promote women’s health and in fact drive more to attempt to self-induce without medical supervision.”¹⁴⁵ The organization claims that they turn to the judiciary because “without intervention by the court, anti-choice lawmakers will have been able to do what they have wanted all along: to put in place harsh and medically unnecessary restrictions that will severely limit safe abortion care in our state, and open the door for states across the nation to follow suit.”¹⁴⁶ The rhetoric used in this claim suggests that judicial intervention in determining the legality of HB2 will guarantee protection from unconstitutional government interference that is believed to have resulted from legislators legislating their personal agendas, in regards to their unfavorable view of abortion accessibility, rather than responding to the interests of their constituents. This press release illustrates the importance and expansive, potential socialization effect of court rulings. The publication concludes, this “is a case rooted in Texas but with national implications.”¹⁴⁷ The most accessible way for pro-choice proponents in the state of Texas to maintain the nationally shared ideology that there

¹⁴⁵ “Whole Woman’s Health v Hellerstedt.” *Whole Woman’s Health LLC*. Web.

¹⁴⁶ “Whole Woman’s Health v Hellerstedt.” *Whole Woman’s Health LLC*. Web.

¹⁴⁷ “Whole Woman’s Health v Hellerstedt.” *Whole Woman’s Health LLC*. Web.

should be no undue burden for women seeking an abortion, is to exercise disciplinary power through the judicial network to receive jurisdiction from the Supreme Court, which would guarantee legal upholding of this shift in socialization.

Members of the pro-choice organizations turn to the judiciary because disciplinary power cannot be exercised between themselves and legislators due to the absence of a network between parties that permits socialization to occur. Access to abortion clinics is in the objective interests of women for a variety of reasons, whereas limiting access to abortions reflects the subjective interests of legislators. This is because women seeking abortions are generally attempting to promote their health and quality of life. Although this is exactly the pretext under which HB2 was signed into law, medical experts predict is having negative effects on the health of women in Texas, which will be addressed shortly. The decline in the health care of women suggests that legislators are attempting to advance personal agendas that reflect their subjective interests to restrict access to abortions when they signed HB2 into law. The facts, questions, answers, and rhetoric presented in the oral arguments before the Supreme Court investigate the true intentions of the legislators that architected HB2, which evaluate whether they legislated HB2 in their subjective or objective interests.

Throughout the oral arguments presented between the plaintiffs and defendants before the Supreme Court, the justices primarily investigate whether HB2 actually enhance the health care of women across the state of Texas, or not. This is because if the restrictions and requirements for clinics were found to be superfluous, HB2 would serve no legitimate purpose other than to limit access to abortion consultations and procedures, which would yield the measure unconstitutional under the Fourteenth

Amendment's Equal Protection and Due Process Clauses as well as *Planned Parenthood v. Casey*. Although no opinion has been rendered, due to the vacant seat, the interrogative questions asked by each justice reveals why each interpreted the law the way they did and how that interpretation led them to vote one way or another.

The questions prompted by the justices that upheld the jurisdiction of the Fifth Circuit, suggest that they found HB2 to serve a legitimate purpose in enhancing the health care of the majority of women across the state. Similarly, the questions from justices that voted to overturn the decision of the Fifth Circuit, insinuate that they found the restrictions to serve too little of a purpose to unduly burden a significant number of women. The questions prompted by the justices reinforce the notion that legislators act independently from the people and raise skepticism whether the intent behind HB2 was to promote health care or restrict access to abortions to possibly reflect popular opinion in order to gain reelection. Once a holding is rendered, this skepticism will be confirmed or denied, but until then, the questions asked by justices offer speculation behind the intent, which reveals the absence of disciplinary power between the people and the legislature.

The legal representative for Whole Woman's Health, Stephanie Toti, begins the oral arguments, claiming "The Texas requirements undermine the careful balance struck in *Casey* between States' legitimate interests in regulating abortion and women's fundamental liberty to make personal decisions about their pregnancies. They are unnecessary health regulations that create substantial obstacles to abortion access."¹⁴⁸ Toti continues to argue that the undue burden placed on women from HB2 is a direct

¹⁴⁸ *Whole Woman's Health v. Hellerstedt*, U.S. (2016)

result of the subsequent clinic closures that resulted from not being able to meet clinical requirements after the bill was signed into law. The justices that upheld the Fifth Circuit's decision, expressed skepticism about Toti's argument, questioning the connection between the cause and effect of HB2 and the clinic closures because if no cause and effect existed, her undue burden argument would be weakened. Justice Alito points out that there is "little specific evidence in the record...with respect to why any particular clinic closed. Basically, your argument is that the law took effect, and after that point, there was a decrease in the number of clinics."¹⁴⁹ The skepticism presented by Justice Alito represents the attitude of each justice that voted to uphold the Fifth Circuit's decision. However, the lack of evidence does not prove that there is no cause and effect, it simply means there is no evidence of that cause and effect on record, which struck the justices that voted to overturn the Fifth Circuit's decision to scrupulous interrogation.

Justice Kagan shockingly clarifies, "11 were closed on the day that" HB2 was signed into law and "in the two-week period that the ASC requirement was in effect, over a dozen facilities shut their doors...and then when that was stayed, when that was lifted, they reopened immediately...It's almost like the perfect controlled experiment as to the effect of the law."¹⁵⁰ This observation expresses the demand for accessible abortions throughout Texas and how the requirements prescribed by HB2 restrict a significant number of clinics, which could be found to unduly burden women if a large enough percentage has to travel over 150 miles to a clinic. Toti explains, "So where the State had a good reason to impose a restriction and that restriction didn't impose

¹⁴⁹ *Whole Woman's Health v Hellerstedt*, U.S. (2016)

¹⁵⁰ *Whole Woman's Health v Hellerstedt*, U.S. (2016)

burdens that were undue, then the restriction could stand.”¹⁵¹ It is important to note that pro-choice proponents would not be opposed to restrictions that enhance the health care of women and are not made in a conflict of interest between the people and the legislators. General Verrilli, also representing the plaintiffs, explains how HB2 “closes most abortion facilities in the State, puts extreme stress on the new facilities that remain open, and exponentially increases the obstacles confronting women who seek abortions...on the basis of medical justification that cannot withstand any meaningful scrutiny that the American Medical Association has told you is groundless.”¹⁵² Since the meaningful medical benefits of HB2 stand as its legal foundation, if those benefits were found to be illegitimate, the legality of HB2 would erode. This is because, this revelation would prove that the intent behind HB2 was not actually to promote the health care of women, which suggests an ulterior motive, which will be explored in a moment.

Scott Keller, representing the defendants, explains how the majority of women throughout Texas benefit from HB2 because the majority of women of reproductive age live in metropolitan areas, which are concentrated with clinics.¹⁵³ This explanation provoked Justice Sotomayor to interrogate, “according to you, the slightest health improvement is enough to impose on hundreds of thousands of women – even assuming I accept your argument, which I don’t, necessarily, because it’s being challenged – but the slighted benefit is enough to burden the lives of a million women.”¹⁵⁴ At this point in the oral arguments, Justices claim that it is undeniable that the abortion clinics that

¹⁵¹ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵² *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵³ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵⁴ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

fulfill the requirements prescribed by HB2 slightly benefit the health care of the women that have access to those clinics. However, Justice Breyer becomes frustrated with the fact that the risk associated with abortion procedures “is miniscule compared to common procedures that women run every day in other areas without ambulatory surgical centers” and points out, “those risks are roughly the same as the risks that you have in a dentist’s office, where you don’t have an ambulatory surgical center.”¹⁵⁵ Justice Breyer is hinting at the possibility of inauthentic intent behind HB2 because it appears that access to abortions are limited to enhance the safety of women when riskier procedures are permitted to continue being performed without comparable requirements. This observation directs attention to the fact that Texas legislators are “only targeting abortion when there is nothing about figures before it that show a risk so unusual that it needs greater attention.”¹⁵⁶ Keller simply responds that this observation about similar procedures “has never been the test under Casey” and “abortions can be treated differently.”¹⁵⁷

Irritated, Justice Ginsburg asks, “What is the legitimate interest in protecting their health...what was the problem that the legislature was responding to that it needed to improve the facilities for women’s health?”¹⁵⁸ Keller responds, “over 210 women annually are hospitalized because of abortion complications,” however, Justice Sotomayor recalls how 750,000 women are unduly burdened by the distance they must travel to the closest abortion clinic.¹⁵⁹ Since this quarter of a million women no longer

¹⁵⁵ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵⁶ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵⁷ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵⁸ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁵⁹ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

have access to abortion clinics, there has been an exponential increase in self-induced and illegal abortions, which obviously is less safe than professionally conducted procedures. There is no evidence that there are more abortion-related hospitalization under HB2 and the subsequent clinic closures, but it is reasonable to predict, “if you lead to self-induced abortion, you will find many more women dying.”¹⁶⁰ This conclusion suggests that the overall health of women across the state of Texas declines as a direct result of the implementation and enforcement of the requirements prescribed by HB2. This observations prompts Justice Breyer to question, “the concern is this tiny risk of dying through a complication in a clinic, is this a remedy that will in fact achieve the legislature’s health-saving plan?”¹⁶¹

Keller explains, “Legislatures react to topics that are of public concern” and when it “sees that there’s a problem...the legislature can still act to make abortion safer, which is precisely what Texas did here.”¹⁶² Justice Ginsburg remains unconvinced, explaining, “we know from Casey that the focus must be on the ones who are burdened and not the ones who are not burdened...in Texas or out of Texas.”¹⁶³ She concludes the oral argument referring back to the decision of the federal district court, which represents “the women for whom this is a problem” and how the jurisdiction of the appellate court reflects the women “who live in Austin or in Dallas” but in the Supreme Court, “what it’s about is that a woman has a fundamental right to make this choice for

¹⁶⁰ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁶¹ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁶² *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁶³ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

herself.”¹⁶⁴ As oral arguments came to a close, justices were left with “a judicial duty to say whether this is an undue burden upon the woman who wants the abortion.”¹⁶⁵

This quick synopsis of the lengthy oral arguments that occurred in the Supreme Court reflect several of the questions surrounding the relationship between the people, the legislature, and the judiciary that are raised by the theory presented in this thesis. The skepticism posed by the justices that voted to overturn the Fifth Circuit’s holding, reflects how legislators are not interdependent on the people to fulfill the duty because it is possible to push their personal and political agendas in favor of reelection. Regardless of whether the promotion of women’s health is truly the intent behind HB2 or not, the sheer possibility, reflected in judicial review, that legislators could be legislating for personal advancement reveals the absence of disciplinary power exercised by the legislature and how the legislative network can be disconnected from serving the common good of their constituents.

The ability of the legislature to operate in this manner reflects a conflict of interests between themselves and the people. This is extremely important because if the Supreme Court holds that Texas legislators signed HB2 into law for any reason other than to enhance the health care of women seeking abortions, legislators will be engaging in a “latent conflict, which consists in a contradiction between the interests of those exercising power and the real interests of those they exclude.”¹⁶⁶ If legislators executed HB2 in order to advance their personal or political agenda, they will have exercised power, under the three-dimensional model, because they are advancing

¹⁶⁴ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁶⁵ *Whole Woman’s Health v Hellerstedt*, U.S. (2016)

¹⁶⁶ Lukes, Steven. *Power: a radical view*. 2nd ed. New York: Palgrave Macmillan, 2005. Print. 28.

political beliefs, which are subjective interests, while the objective or “real” interests of women (health) suffer in latent conflict of one another as a result of an overall decline of women’s health in Texas. Meanwhile, legislators would be achieving their subjective interests of gaining reelection, while the fundamental right of female choice suffers.

The absence of a network for individuals to exercise disciplinary power with certain branches of government permits the possibility of coercion to occur. However, this reinforces the necessity of an accessible judicial network for individuals to have the ability to generate and perpetuate shifts in socialization through the American legal network to respond to evolving values, norms, and ideologies to receive legal protection. In this particular case, the accessibility of the judiciary permits pro-choice proponents to engage in exchanges of disciplinary power between themselves, the respondents, and judicial figures throughout the appellate process. The role of the judiciary is to consider this exercise of disciplinary power in relation to the law to unveil the truth behind the legality of HB2.

Throughout the appellate process, courts of varying degrees of jurisdiction rule differently due to the socialization effect they have on the region over which they reside. Ultimately, the Supreme Court’s decision will uphold the restrictions established by HB2 or will overturn the decision of the Fifth Circuit. The result would be a national shift in socialization that establishes how the governed and governors internalize information about the accessibility of abortion consultations and procedures. The judicial system “is a tremendous advantage to society” because “judges rule on the basis

of law” to influence how American citizens carry out every day functions.¹⁶⁷ For these reasons, the structural network of the legal system permits the interdependent exercise of disciplinary power between citizens and the judiciary to guarantee protection from government interference for actions made in pursuance to cultural shifts in socialization.

¹⁶⁷ Carney, Dan. “LAW & JUDICIARY: Indicting the Courts: Congress’ Feud with Judges.” CQ Weekly, (1998): 1649-1666.

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