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From the SelectedWorks of Peter J. Aschenbrenner

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Table Annexed to Article: What the Polar Bears Taught the Cops

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The reader is invited to the largest municipality in the world. Three narratives are presented.

**Narrative One**

A village police officer is accused of spraying mace; he was arresting an adult; there is no question as to the legality of this arrest or the means the officer used to accomplish this arrest.

However, one-year-old child was also sprayed.

The reader may want to assume that she, the reader, occupies the following place in the narratives.

1. She is a judge hearing the criminal case against the defendant (who was arrested);
2. She serves as an assembly member on the council which is the governing body of the municipality.
3. She analyzes the case with her fellow lawyers, employed by the municipality in its Department of Law.

Narrative One, through a reconstructed exchange, using Should statements:

The citizen may be taken to have said words to this effect:

Citizen:
It is not good that an officer sprays mace around a child.

The cop may be taken to have said words to this effect:

Cop:
It is good that an officer capture a suspect with minimal force.

Of course, neither citizen nor cop said this; perhaps neither has ever thought these thoughts. But if I as investigator put them on the stand, one or the other (or the attorney for either the citizen or the cop) might use words to this effect or agree with these sentiments.

**Narrative Two**
An officer was accused of manhandling a child from a classroom and through the hallways of the school to the principal’s office. The complaint accuses the teacher of also manhandling the child. The child had lost her temper and been yelling in the classroom. Interviews were conducted and the department concluded that the force used was within guidelines.

**reconstructed Shouldstatements**

Cop:
It is good that a cop take an out-of-control child out of the classroom.

Citizen:
It is not good that a cop uses too much force in removing a child from a classroom.

**Narrative Three:**

The complaint alleged that the officers did not enforce the curfew for young children. This curfew was partially intended to keep kids safe from the polar bears that wander the streets. Interviews were conducted. The citizen’s complaint and the police department’s position were morphed into the following

Citizen:
It is good that cops should patrol after curfew to keep kids off the streets where there are polar bears.

Cop:
It is good that cops take action as they see fit to enforce the curfew.

**observations on reconstructing Shouldstatements**

Two sentences, or Shouldstatements, were created. These Shouldstatements voices what is good for the group or goodness. The statements are made as nearly abstract as possible. The ‘who,’ ‘what,’ ‘what,’ ‘where,’ and ‘when’ (beloved and properly so) of journalism instructors are stripped from the Shouldstatements.

Each statement one might serve as a catch phrase or even statement of principle for the cop or citizen. The cop would probably be a witness in a criminal or possibly civil case. Perhaps the cop might be involved in an internal affairs investigation or other intra department investigation. The citizen would most
likely be a defendant in a criminal case, perhaps being a witness in a criminal or less likely a civil case.

Lawyers bring a variety of talents to articulating or recasting original situations into Shouldstatements. Counsel for the cop or citizen in a civil, criminal or administrative proceeding, would devise a sentence that rings true, given the situation as the client knows it and it would also be a sentence that rings true given what the attorney thinks will be likely to play out in the hearing.

The reader will notice that OCL has spun out two statements; they are not perfectly opposing.

negation

Now the reader will get a taste of what is to come. The grammatical structure of the English language provides a substitute for any trial-type or assembly-type venue. This parallelism comes about because the reader can call upon grammar to generate Shouldstatements without having decision-makers or rule-makers gather in their respective venues and consider near-opposing propositions. Parliamentary procedure then securing generation of assumptions.

Take negations: Getting a negation out of a Shouldstatement is a matter of grammatically pushing “not” into a Shouldstatement or taking it out, following grammatical and stylistic rules to get a correctly written sentence.

Sometimes stiff or clumsy, but still correct.

Cop:
It is good that a cop takes an out-of-control child out of the classroom.

Citizen:
It is not good that a cop takes an out-of-control child out of the classroom.

Or:

Citizen:
It is not good that an officer sprays mace around a child.

Cop:
It is good that an officer sprays mace around a child.

Negation is a matter of grammar. Negation is a powerful tool because, as every debater knows, tactical gains can be achieved by making the opponent
defend the negation of your position, taking time and effort from his defense of his own Shoulldstatement. More importantly, surprising things issue when N and O square off: especially when opponent O is forced to negate N’s Shoulldstatement or feels himself obliged to do so.

*fairness (right and duty) statements*

The Shoulldstatement articulates what is good for the whole, the community, and the group. When the Shoulldstatement is placed in the mouth of the participant, the participant is identifying herself with the common good.

But when people speak or write (such as a citizen writing a complaint letter or a cop writing a report on a citizen complaint), they tend to employ right and duty statements, which often begin:

I have the right to …
You have the duty to …

These can be drawn, as a matter of grammatical effort, from any goodness statement. All Shoulldstatements are in goodness form; all goodness statements can yield right and duty statements for any and all participants in venue (and others not in venue) with minimal grammatical effort.

The reader may recognize the work of Wesley Newcomb Hohfield (1879-1918) grounds this portion of the analysis. Since rights and duties are correlatives, the existence (if only in a reconstructed Shoulldstatement) of one implies the existence of the other. In short, for every right there is a duty, so that if X has a right there is some Y in the world that is obliged to honor X’s right. Without diminishing his work, it is worthwhile to recognize that Jeremy Bentham preceeded Hohfield and Aristotle preceeded both, when, in the Categories, he identified that for every ‘ability’ a ‘disability’ may be assigned, as a matter of predicate logic.

The take-away here: OCL points out that grammar exists to supply subroutines to any text writer in a convention as well as to any rule writer or decision maker in legislative or litigation venues.

OCL can then flesh from any exchange between two human beings two goodness statements in the affirmative, one for each of the opposing participants. From these opposing Shoulldstatements, a negation may then teased out grammatically. That’s a total of four Shoulldstatements; plus right and duty statements for each of the four Shoulldstatements for another eight Shoulldstatements.

Thus a total of twelve sentences or Shoulldstatements for each exchange can be reconstructed. An example follows, in which ‘G’ alerts the reader that a ‘goodness’ statement has been uttered, while ‘R’ and ‘D’ are right and duty statements.
Citizen:
It is not good that an officer sprays mace around a child. \( G_1 \)

Cop:
It is good that an officer captures a suspect with minimal force. \( G_2 \)

Since there are right and duty statements for each \( G \), then for \( G_1 \), there is \( R_1 \) and \( D_1 \).

Citizen:
I have the right not to have an officer spray mace around a child. \( R_1 \)
I have the duty not to have an officer spray mace around a child. \( D_1 \)

For \( \neg G_1 \), there is \( \neg R_1 \) and \( \neg D_1 \).

Cop:
I have the right to capture a suspect with minimal force. \( R_1 \)
I have the duty to capture a suspect with minimal force. \( D_1 \)

The flexibility as to the placement of ‘not’ in the R and D statements follows from what has been said before: we’re in the realm of reconstructed statements for the purpose of testing OCL’s theory that grammar will tease, parallel to parliamentary procedure, assumptions from competing propositions.

**listing the twelve grammatically possible Shouldstatements**

The goal is to obtain a minimal listing of Shouldstatements. This effort disciplines participants in venue; such a participant can consider how \( G, R, D \), or \( \neg G, \neg R, \neg D \) might be appear to be valid to someone, such as a participant in the original situation or to another participant in venue or even to an actor playing the participant in an imitation venue. Here are the twelve.

(1) It is good that cops should patrol after curfew to keep kids off the streets where polar bears roam.
(2) I, a citizen, have the right to have cops patrol after curfew.
(3) I, a citizen, have the duty to allow cops to patrol after curfew.
(4) It is not good that cops should patrol after curfew.
(5) I, a citizen, do not have the right to have cops patrol after curfew.
(6) I, a citizen, do not have the duty to allow cops to patrol after curfew.
(7) It is good that cops take action as they see fit to enforce the curfew.
(8) I, a cop, have the right to take action to enforce the curfew.
(9) I, a cop, have the duty to take action to enforce the curfew.
(10) It is not good that cops take action as they see fit to enforce the curfew.
(11) I, a cop, do not have the right to take action to enforce the curfew.
(12) I, a cop, do not have the duty to take action to enforce the curfew.

Since there are as many pairs of fairness statements as there are human points of view, ShouldStatements (2) and (3) can be elaborated for others besides citizens: say the Mayor of the town, a city councilman, the community search and rescue team that would have to respond to a bear mauling, a state fish and wildlife officer that might have to trap or track the animal, or the chief of police or official in state police.

An example might be:
(2) It is good that cops should patrol after curfew to keep kids off the streets where there are polar bears.
(3) I, a city councilman, have the right to require that the police department patrol after curfew.
(4) I, a city councilman, have the duty to require that the police department patrol after curfew.

Thus: instead of one pair of (2) and (3), a listing of Shouldstatements for an issue in a community might include several different couples. Or perhaps the lister would only include those pairs which touch on the most pertinent aspects of the individual’s life or profession.

(7) It is good that cops take action as they see fit to enforce the curfew.
(8) I, a state fish and wildlife officer, have the right to have the cops take action to enforce the curfew.
(9) I, a state fish and wildlife officer, have the duty to have the cops take action to enforce the curfew.

*charting assumptions*

The above exercise can be charted. An early example of charting is found in Kant’s *Preface to the Metaphysics of Morals*; in the *Einteilung der Metaphysik der Sitten Überhaupt* Kant offers a square divided into four smaller squares; in each of these four squares he places a grammatically correct proposition he has spun out for testing in the chart. When a proposition yields nothing of interest Kant marks
the square as vacat; a hit is recorded as adest. This will be addressed in another article.

OCL uses charting for two purposes: First, to show that instead of parliamentary procedure guiding delegates at a convention to tease out varieties of G, R and D statements through debate, the delegates could, on the voicing of any proposal, generate a variety of these statements, twelve in fact, from the deployment of their own grammatical skills. Second, if grammar parallels – and can substitute for process – then the assumptions oblige another level of effort. In short, the claim that process is an assumption generator is an interesting claim, but opens the door to analysis of proposed Shouldstatemements based on Logics, Feasibilities and Semantics.

The reader who doubts the value of this approach is invited to turn to the machine-readable text of the Early Constitution, all 5,224 words, and, using Control-F, search for the instances of the word ‘shall.’ The two hundred and twenty-nine hits should indicate to the reader that the will of some future actors are to be overcome by the shouldness visioned by the convention. Getting the density of this vision – or the visions associated with each of the 103 Constitutional Text Units – is the task of OCL.