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# A STRUCTURAL ETIOLOGY OF THE U.S. CONSTITUTION

*Charles Lincoln*<sup>†</sup>

## ABSTRACT

This article offers an interpretation of the problems addressed by and the eventual purpose of the United States government. Simultaneously, it seeks to analyze and explain the continued three-part structure of the United States federal government as outlined in the Constitution. Subsequently I define the three parts of the federal government—judiciary, executive, and legislative—as explained through the lens of the Platonic paradigm of (*logos* = word = law), (*thymos* = external driving spirit = executive), and (*eros* = general welfare = legislative) extrapolated from Plato’s dialogues.

First, the article establishes Plato’s theory of the three-part Platonic soul as a major premise, as in a syllogism. Second, the article lays out the generally accepted division of the U.S. Constitution as creating three parts to the federal government as a minor premise. Third, the syllogism completes by weaving in the major premise of Plato’s soul into the three parts of the United States federal government. This third step of application suggests possible future evolution of the structure.

This article fits into the wider issue of the functionally efficient and naturally adaptive structure of the U.S. federal government. Providing a historical and philosophical context to this structural analysis will serve as a framework for future research on the operation of the federal government. When the branches of the federal government step out of their roles, the balance of the structure of the federal government becomes disrupted occurring in liminal periods of paradigmatic change.

## INTRODUCTION

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<sup>†</sup> Charles Edward Andrew Lincoln, IV, ("Charlie") received his J.D. from Texas A&M University in May 2016 after graduating, cum laude, with a Bachelor's Degree in Government from Harvard University, in June 2013. Throughout his College and Law School years, Charlie has been fascinated by the intersection of philosophy and power in politics. He has written on Hegelian Dialectic in the evolution of U.S. Constitutional Law as well as Platonic influences in the U.S. Constitution, both of which have been accepted for publication. In September 2016, Charlie began the advanced LL.M. program in International Tax Law at the University of Amsterdam, for which he plans to write a thesis on the transfer pricing and valuation of intangibles. Charlie hopes to work in International Cooperation and Policy Development, and may be reached at [charlesedwardandrewlincolniv@post.harvard.edu](mailto:charlesedwardandrewlincolniv@post.harvard.edu)

This paper argues that the tripartite system of government in the United States can be viewed through the Platonic concept of the soul (ψυχή).<sup>1</sup> The major premise is that the United States federal government has three major parts—the judiciary, the executive, and the legislative. The minor premise of this paper is that the Platonic soul is divided into three parts—the *logos* (λογιστικόν),<sup>2</sup> the *thumos* (θυμοειδής),<sup>3</sup> and the *eros* (ἐπιθυμητικόν).<sup>4</sup> The syllogism and argument of this paper is that the three federal parts of government represent the Platonic soul: the judiciary being the *logos*, the executive being the *thumos*, and the legislative being the *eros*. This paper will explore these concepts in greater depth. As a corollary, when the soul of the polity<sup>5</sup> becomes unbalanced, then people become dissatisfied with the government because government does not fulfill its function administratively—as in acting in opposition to the laws—and in promoting justice. However, sometimes overstepping a role in the Platonic soul of the polity is necessary change.<sup>6</sup>

## I. PREMISES AND STRUCTURES OF ANALYSIS

Presumed throughout this paper is that the world has order based in reason that reflects nature.<sup>7</sup> In Plato's *Timaeus*, the interlocutor suggests that nature is organized and is thus intelligible.<sup>8</sup> The alternative to this presumption is that there

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<sup>1</sup> This can perhaps be better understood for purposes of this essay as “aspects of existence.” Also, consider the similarity to Sigmund Freud's psychoanalysis. See Sigmund Freud, *The Ego and the Id*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud* 3, 25 (James Strachey ed. & trans., 1961). The Liddell & Scott's A Greek-English Lexicon defines the word as, “ψυχή, ψύχω I. breath, Lat. anima, esp. as the sign of life, the life, spirit.” *Ψυχή*, Henry George Liddell & Robert Scott, *An Intermediate Greek-English Lexicon*, (Clarendon Press, 1889), available at

<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0058%3Aentry%3Dyuxh%2F>  
<sup>2</sup> PLATO, *THE REPUBLIC OF PLATO* 435e–442a (Allan Bloom ed. & trans., 2d ed. 1991) [hereinafter PLATO, REPUBLIC].

<sup>3</sup> *Id.* at 439a, 439e3–4.

<sup>4</sup> *Id.* at 439d5–436a1-3.

<sup>5</sup> “A particular form of government or political organization.” *Polity Definition*, SEADICT.COM (Oct. 13, 2016), <http://www.seadict.com/en/en/polity>.

<sup>6</sup> In the dialogue, Socrates suggested the three parts of the soul should not prevent the other parts from functioning appropriately. PLATO, REPUBLIC, *supra* note 2, at 433a.

<sup>7</sup> MARCUS TULLIUS CICERO, *DE RE PUBLICA* 3.22.33 (Loeb Classical Library, 1928).

<sup>8</sup> PLATO, *TIMAEUS* 30a–31b (Robin Waterfield trans., Oxford Univ. Press 2008). The page numbers used throughout this paper to refer to Platonic texts are in accord with the Stephanus pagination. Substantively, are randomness or patterns provable or real? How do we even decide what is random if not through statistical or other mathematical analysis? Philosophically speaking there could be a discrepancy between a series following a mathematical rule or being truly random. Ludwig Wittgenstein in his *Philosophical Investigations* explained how randomness *can* really be explained in terms of increasing complexity of following a rule, but paradoxically if everything can be shown to be following a rule it can also at the same time be shown to not follow a rule.

This was our paradox: no course of action could be determined by a rule, because every course of action can be made out to accord with the rule. The answer was: if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here.

It can be seen that there is a misunderstanding here from the mere fact that in the course of our argument we give one interpretation after another; as if each one contented us at least for a moment, until we thought of yet another standing behind it. What this shews is that there is a way of grasping a rule which is not an interpretation, but which is exhibited in what we call “obeying the rule” and “going against it” in actual cases.

is no order to the universe or world and humans try to impose order to it.<sup>9</sup>  
 Lucretius, in his *On the Nature of the Universe*, introduced such a view.<sup>10</sup>

Consequently, nature can represent itself in the structure of law, specifically the law of the United States.<sup>11</sup>

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Hence there is an inclination to say: every action according to the rule is an interpretation. But we ought to restrict the term "interpretation" to the substitution of one expression of the rule for another.

LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* § 201 (G.E.M. Anscombe & R. Rhees eds., G.E.M. Anscombe trans., 1972).

This makes one question whether randomness really exists or does everything follow a set rule? See, e.g., Ahilan T. Arulanantham, *Breaking the Rules?: Wittgenstein and Legal Realism*, 107 YALE L.J. 1853, 1869–71 (1998); Dennis Patterson, *Wittgenstein and Constitutional Theory*, 72 TEX. L. REV. 1837, 1851 (1994); Scott Hershovitz, *Wittgenstein On Rules: The Phantom Menace*, 22 OXFORD J. OF LEGAL STUD. 619, 639–40 (2002).

<sup>9</sup> Such an example can be seen in literature:

Borges's *The Library of Babel* implicitly undercuts all the written structures - religion, science, art -- through which human beings strive to impose order on an unruly world. It consists of a fantastic monologue in which a Librarian, who lives in a Library which is also the universe, tries unsuccessfully to describe the chaotic infinity (or near infinity) that surrounds him. According to the Librarian, the Library may or may not be endless; but it is certainly meaningless, being made up of numberless books in a Babel of tongues. Because it contains all the possible combinations of letters in all languages, many of the books contain only an intelligible word or two, or are only partially true copies of books contained in their proper form elsewhere in the Library. The Librarians spend their time, among other ways, searching for the true catalogue that would bring order and meaning to their incomprehensible collection.

Susan Mann, *The Universe and the Library: A Critique of James Boyd White as Writer and Reader*, 41 STAN. L. REV. 959, 965 (1989).

<sup>10</sup> LUCRETIUS, *ON THE NATURE OF THINGS* (H. A. J. Munro trans.), reprinted in 12 GREAT BOOKS OF THE WESTERN WORLD 1, 12 (Robert Maynard Hutchins ed., 1952). Concurrently, directly contrasting the Platonic theory of order the universe,

The contrary materialist view characterizes archetypes as speculative constructs. Aristotle and Plato had their ancient Greek materialist counterparts in Epicurus, Democritus, and Lucretius, who in his *On the Nature of the Universe* wrote that all things began from "the purposeless congregation and coalescence of atoms." There are uniform and entirely natural causes in a closed system not ordered or otherwise affected by the presence of a higher mind capable of recognizing and ordering information. Thus Epicurus could hold that morality was merely a sensual matter of seeking pleasure and avoiding pain, not a sensitivity issue to any particular purpose or design. Aristotle's teleological universe was rejected for an atomistic universe without purpose or form in which biological forms and the ordered universe in which they exist were not the fixed product of information, intelligence, or design but of random accretion. Nobel Prize winning biologist George Wald, physicist Freeman [26] Dyson, and astronomer George Greenstein explain the improbability of the universe's remarkable order by suggesting either that the universe did not exist until humans observed it and (in Wald's words) that "[t]he universe wants to be known."

Marion Hilligan, Nelson P. Miller, Don Petersen & Chris Hastings, *Superhuman — Biotechnology's Emerging Impact On The Law*, 24 T.M. COOLEY L. REV. 1, 25–26 (2007).

<sup>11</sup> Such as the interlocutor suggests nature represented itself in Athens. See PLATO, *TIMAEUS*, *supra* note 8, at 90b–c. Recent work suggesting there is an order to the world's structure:

About fifty years ago a physicist called Paul Dirac asked himself why the number ten to the fortieth power keeps occurring. The square of this number, ten to the eightieth power, is the mass of the visible universe, measured in terms of the mass of the proton. The number itself, ten to the fortieth, is the present age of the universe, expressed in units of time it takes light to travel across a proton. And, get this, the constant that measures the strength of

### A. *Why a Structured Approach at All? An Anthropological-Philosophical Explanation*

To understand why it is appropriate to analyze and compare the U.S. government with the Platonic concept of the soul, it is helpful to have some understanding of the context of philosophical-anthropological thought related to it. The following paragraph is a brief overview of relevant historical analysis to provide context related to structural and “trifunctionalist” analysis. Indeed, many anthropological-philosophical theories exist for understanding the basic structures of societies and governments, from Claude Lévi-Strauss’s structuralism theories,<sup>12</sup> to Michel Foucault on the impetus behind government function,<sup>13</sup> to Marvin Harris on gift giving incentives in a society’s structure.<sup>14</sup> Concurrently, the idea of a “tripartite” structure of society being inherent to human cultures is not new, but it has been written about extensively by George S. Dumezil<sup>15</sup> and has been addressed

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gravity in terms of the electrical force between two protons is ten to the fortieth times weaker! Also, ten to the fortieth to the one-fourth, or ten to the tenth, just about equals the number of stars in a galaxy, the number of galaxies in the universe, and the inverse of the weakfine structure constant! JOHN UPDIKE, *ROGER’S VERSION* 23–24 (1986); GEORGE JOHNSON, *A FIRE IN THE MIND: SCIENCE, FAITH, AND THE SEARCH FOR ORDER* 308–16 (1996).

Robert Birmingham, *Proving Miracles and the First Amendment*, 5 *GEO. MASON L. REV.* 45, n.60 (1996).

<sup>12</sup> “To illustrate the nature of structuralist theory, this discussion will concentrate on the work of Claude Lévi-Strauss. Lévi-Strauss has made the search for the fundamental properties of human thought the focus of his work. His basic objective is uncovering the universal, basic structure of human thought, which is deep below the surface but is manifested [*sic*] in myth, language, cooking, table manners, and the general structures of social life. This basic structure, which is termed ‘deep structure,’ will identify cross-cultural similarities.” Donald H. J. Hermann, *Phenomenology, Structuralism, Hermeneutics, and Legal Study: Applications of Contemporary Continental Thought to Legal Phenomena*, 36 *U. MIAMI L. REV.* 379, 390–91. (1982).

<sup>13</sup> In an article, Jinks explains:

Michel Foucault’s compelling and poetic methodological manifesto describes the nature of ‘critique’ and, thereby, the proper role of the critic. For Foucault, ‘critique’ was more than a means to an end; criticism was itself an act of resistance and refusal. Toward this end, Foucault sought to decouple criticism from positive programs for social and political change. Criticism is, according to this view, a negative operation - ‘essays in refusal’ - resisting and rejecting ‘what is’ without regard for ‘what needs to be done.’ For this reason, Foucault’s views have occasionally been labeled ‘rejectionist.’ Such ‘rejectionist’ claims, in turn, exemplify the most feared aspects of a new challenge to traditional legal thought: postmodernism.”

Derek P. Jinks, *Essays in Refusal: Pre-Theoretical Commitments in Postmodern Anthropology and Critical Race Theory*, 107 *YALE L.J.* 499, 499–500. (1997). See also Tom Frost, *Agamben’s Sovereign Legalization of Foucault*, 30 *OXFORD J. LEGAL STUD.* 545 (2010) for a discussion on Foucault’s ideas on law and sovereignty.

<sup>14</sup> MARVIN HARRIS, *THE RISE OF ANTHROPOLOGICAL THEORY* (1968). See also Perry Dane, *Jurisdictionality, Time, and the Legal Imagination*, 23 *HOFSTRA L. REV.* 1, 94. (1994); John W. Ragsdale, Jr., *The Rise and Fall of the Chacoan State*, 64 *UMKC L. REV.* 485, 528 (“The reciprocity concept justifies the assumption that one who gives will receive in return, though there are no hard promises as to timing, quality, or quantity.”); BRONISLAW MALINOWSKI, *ARGONAUTS OF THE WESTERN PACIFIC* 72–6 (Routledge 1961) (1922) (regarding gift giving cultures).

<sup>15</sup> According to Dumezil, the division of society—government—into three parts was inherent in all Indo-European societies. The trifunctional pattern (and implicit political separation of powers) is manifest among the Hindus in the original Castes: Brahmana (teachers, priests, keepers of the law), Ksatriya (Warrior Kings), and Vaisya (Farmers, Producers, Merchants and Doctors) (“For classic development of this so-called ‘tripartite hypothesis’ concerning the division of social roles in Proto-Indo-European societies, see generally GEORGES DUMEZIL, *FLAMEN-BRAHMAN* (1935); Georges DUMEZIL, *MITRA-VARUNA: AN ESSAY ON TWO INDO-EUROPEAN REPRESENTATIONS OF SOVEREIGNTY* (Derek Coltman trans., 2d ed. 1988).”) Robin Bradley Kar, *Western Legal Prehistory: Reconstructing the Hidden Origins of Western Law and Civilization*, 2012 *U. ILL. L. REV.* 1499, 1525 n.71. (2012). See GEORGES DUMEZIL, *ARCHAIC ROMAN RELIGION* 585 (1966); see

by Sigmund Freud's division of psychoanalysis.<sup>16</sup> Indicative of the universal nature of the "trifunctionalist," Dumezilian approach has even been applied to Pre-Columbian Yucatán Mayan societies.<sup>17</sup> Poetically, in the Homeric Greek account of the Judgment of Paris—prior to the beginning of the Trojan War in Homer's *Iliad*—Paris of Troy is given a Dumezilian "choice"—a beauty contest among three goddesses: Hera, Athena, and Aphrodite.<sup>18</sup> It seems fitting to apply the Ancient Greek concept of the Platonic Soul to governmental structure because the "trifunctionalist" approach has origins in Ancient Greece, but it can also be seen in non-western civilizations.

A balanced view of government may exist in the separation of powers as Montesquieu laid out: "that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."<sup>19</sup> Exploring this thought "[i]n The Federalist No. 47, Madison explained that while Montesquieu was correct in saying that the separation of the legislative, executive, and judicial powers was essential to liberty, that conclusion did not purport to tell us how strict the resultant separation had to be."<sup>20</sup> Based on their education, the framers of the Constitution may have even had Plato's Soul in mind when they framed the Constitution.<sup>21</sup> Even if the framers did not have Plato on their mind, the idea of Plato's Soul is arguably inherent in humans regardless of how it is defined.<sup>22</sup> Moreover, a structured approach to the philosophical underpinnings to a government can be assumed to have been in the framer's mind — whether consciously or subconsciously.

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also WOUTER W. BELIER, DECAYED GODS: ORIGIN AND DEVELOPMENT OF GEORGES DUMEZIL'S "IDEOLOGIE TRIPARTIE" 17–20 (1991) (for critiques of the trifunctional hypothesis).

<sup>16</sup> David S. Caudill, *Freud and Critical Legal Studies: Contours of a Radical Socio-Legal Psychoanalysis*, 66 IND. L.J. 651, 658–659 (1991). See FREUD, *supra* note 1, at 19.

<sup>17</sup> Charles E. Lincoln, Ethnicity and Social Organization at Chichen Itza, Yucatan, Mexico (May 16, 1990) (unpublished Ph.D. dissertation, Harvard University). See Charles E. Lincoln, *The Chronology of Chichen Itza: A Review of the Literature*, 141, 141–156 in LATE LOWLAND MAYA CIVILIZATION: CLASSIC TO POSTCLASSIC, (Jeremy A. Sabloff & E. Wyllys Andrews V eds., 1986).

<sup>18</sup> In THE ILIAD OF HOMER 14:28–30 (Richmond Lattimore trans., 25th reprint ed. 1976) (1951), it states:

[T]he well known Judgment of Paris, which Homer apparently knew. Although it is not directly recounted in the Iliad, there is a clear reference to it in Book 14, where Hera's displeasure with the other gods (i.e., gods who were urging Achilles to treat Hector's corpse with respect) was attributed to the Judgment of Paris: 'because of the delusion of Paris / who insulted the goddesses when they came to him in his courtyard / and favoured her who supplied the lust that led to disaster.' The myth of the Judgment of Paris began when Peleus and Thetis did not invite Eris, the goddess of discord, to their wedding. Eris, feeling snubbed, concocted one of literary history's most evil schemes. She procured a golden apple and inscribed it 'For the fairest.' She then crashed the wedding feast and tossed the apple onto the table. Three goddesses, Hera, Athena, and Aphrodite, each argued that it should be hers. They asked Zeus to decide. He refused because he feared his wife's anger in the event that he did not choose her. He passed the buck and suggested that the Trojan prince Paris, the son of Priam, act as arbiter."

Russ VerSteege, *A Contract Analysis of the Trojan War*, 40 ARIZ. L. REV. 173, 192 (1998).

<sup>19</sup> MONTESQUIEU, THE SPIRIT OF THE LAWS bk. XI, ch. 6, at 152 (Thomas Nugent trans., Hafner Pub. 1949) (1748).

<sup>20</sup> John F. Manning, *Separation of Powers as Ordinary Interpretation*, 124 HARV. L. REV. 1939, 2004 (2011).

<sup>21</sup> JAMES J. WALSH, EDUCATION OF THE FOUNDING FATHERS OF THE REPUBLIC: SCHOLASTICISM IN THE COLONIAL COLLEGES 104–05 (1970).

<sup>22</sup> JEAN-FRANCOIS PRADEAU, PLATO AND THE CITY 129 (2002).

### B. Why Plato? Truth and Justice in Plato

If one accepts the premise that structured and philosophical approaches are a reasonable mode of analysis, then why should one use Plato's approach specifically?

This idea of comparing the Platonic soul to the United States federal system of government has previously been written about by Akiba Covitz in *The Soul of the Polity*.<sup>23</sup> Covitz argued the syllogism as judiciary is the *thumos*, the executive is the *logos*, and the legislative is the *eros*. This paper greatly appreciates and gains much inspiration from Covitz's theory, but switches correspondences from *thumos* to *logos* for judiciary, *logos* to *thumos* for executive, and maintains Covitz's conception of legislative as *eros*. However, Covitz uses a different terminology of 1) artifice, 2) nature, and 3) history/divinity/myth in lieu of *logos*, *eros*, and *thumos*, respectively.<sup>24</sup> Covitz argues that the constitution had a psychoanalytic dimension, and these Platonic elements, in large part, represented this psychoanalysis.<sup>25</sup>

Professor Covitz sincerely wanted to explore what a constitution is. He asked "tiesti or 'what is?'" translated from Greek.<sup>26</sup> This is a classic question that drove the Greeks as a purely innocent love for searching for knowledge. This article has a sourced inspiration from such an inquiry. Covitz asks, "[w]hy, then, have I chosen Plato's *Republic* along with the Constitution of the United States as the two main texts that I will analyze?"<sup>27</sup> He answers, "My broadest goal is to seek the beginnings of American constitutional thought, and my related, narrower goal is to provide a response to the question of why the American Constitution is seen to be such a success." Indeed, this represents a variation of the two-pronged endeavor, which this paper searches to solve. First, what does it mean for the three parts of the government to interact with one another? Second is, why has the American Constitution lasted so long and with relatively few amendments?

Covitz suggests an easy answer to these questions would be to "choose the Constitution of the United States and a more contemporary and more straightforward text (at least in terms of form) such as Locke's *Second Treatise on Government*, or Montesquieu's *Spirit of the Laws*."<sup>28</sup> But Professor Covitz sought "more than a deeper understanding of the American Constitution; [he sought] its beginnings."<sup>29</sup>

Professor Covitz quotes an introduction to an edition of Plato's works by Erich Segal where Segal quotes "Spanish neo-Kantian social theorist, Jose Ortega Y Gasset," that succinctly indicates Professor Covitz's and this article's interest in the *Republic*. Covitz writes, "Ortega Y Gasset describes Plato's influence on Western thought in the following manner: 'It is impossible to tell [to] what deep levels of the Western mind Platonic notions have penetrated. The simplest sort of person

<sup>23</sup> As far as the author knows, Akiba Covitz is the only person to have written on this subject.

<sup>24</sup> Akiba J. Covitz, *The Soul of the Polity: Beginnings of American Constitutional Thought* xxii–xxv (1999) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with author).

<sup>25</sup> *Id.* at xvii–xx.

<sup>26</sup> *Id.* at iv.

<sup>27</sup> This article will also focus on the Constitution and Plato's *Republic*, as well as other works that have interpreted them.

<sup>28</sup> See generally Akiba J. Covitz, *The Soul of the Polity: Beginnings of American Constitutional Thought* 80–82 (1999) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with author).

<sup>29</sup> *Id.*

regularly employs expressions and portrays views which are derived from Plato (Plato 1986, vii).<sup>30</sup>

Covitz lays out the great appeal to using Plato's work: "Put more simply, Plato has provided for the West a fertile image, founded on a complex theory of psychology and politics, of how the soul is seen as working and how it is intimately connected with politics and constitutions."<sup>31</sup> However, Covitz admits there is a darker — more tyrannical and dictatorial — side to Plato's works. Specifically, "according to [Karl] Popper, Plato's Republic is the handbook of tyranny and the guide to constructing a society closed to all change and freedom. Plato's use of lies, myths, and the powers of divinity as aspects of constitutional life, are indicative for Popper of Plato's falsity and duplicity (see Popper 1945)."<sup>32</sup> This is a relevant argument because despite the appeal of Plato's work for positive ideas, there has also been a more evil side to the works supporting fascism and Nazism.

However, if one is to understand the beginning of the US Constitution, one must be familiar with not only the circumstances that gave its birth but also the great books that the authors of the Constitution read. Covitz supports this by writing "if one is to search out the theoretical beginnings of American constitutional thought, one must come to grips with the textual beginnings of the Western constitutional thought in which the American experience is itself framed."<sup>33</sup> This can be interpreted as the books and laws with which the framers were most familiar, "regardless of our views of Plato's tyrannical or democratic qualities. Important, underlying aspects of this broader realm of Western constitutional thought began in the dialogic pages and the constitutional theory of Plato's Republic."<sup>34</sup>

## 1. Truth and Plato's Forms

Indeed, it must be mentioned that Plato's soul has a special connection to truth and Plato's "Forms" in his philosophy, as explained by Kenji Yoshino.<sup>35</sup> Unlike "the poet [who] always misrepresents the truth," Yoshino claims, "[i]n the Republic, Plato describes the existence of immutable, abstract, and invisible Forms."<sup>36</sup> Yoshino states that "[t]hese Forms are the ideals to which Plato seeks to anchor the state and the human soul, which is the microcosm of the state. The highest Platonic aspiration for human beings is to bring us closer to these Forms. The difficulty is that our ordinary modes of perception—such as our senses—cannot seize these ideas." However, Yoshino interestingly writes, "Only right reason, as exercised through dialectic, can do so in any systematic way."<sup>37</sup>

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Kenji Yoshino, *The City and the Poet*, 114 YALE L.J. 1835, 1842–43 (2005).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 1843. Conversely, Plato's idea of the soul is similar but different from Aristotle's view,

Aristotle's use of the vocabulary of *dunamis* is unusually complex and requires clarification. A typical example of the first meaning ("innate") is found at ARISTOTLE, *ETHICA NICOMACHEA*, *supra* note 13, at 1105b20–28, which contrasts *dunamis* with a developed capacity. But in other passages, *dunamis* is clearly used in the sense of a developed capacity. *Id.* at 1094b2, 1101b13, 1143a28. Finally, the term is sometimes used when the capacity is already active, and thus the conditions for its activation must be present. See ARISTOTLE, *DE ANIMA* 412a1–413a10 (W.D. Ross ed., 1956) (defining



Plato's — and Professor Yoshino's — intersection of truth, as represented by the forms and justice compels one to look further into why the two are related.

Professor Yoshino's formulation of "right reason,"<sup>38</sup> sounds akin to the concept of natural law. Natural law exists in religion and higher ethics, which may or may not exhibit themselves in statutes and case law. Natural can be defined as that which is not positive law, but it can also be defined as follows: "Natural law refers to the ethic of justice, fairness, or right. Although denominated 'law,' it is not positive law at all, but rather is a sense derived from God-given or rational sources."<sup>39</sup> Such a definition emphasizes the importance of religion as a base for natural law. However, it can also be based in rational reason or right reason as Professor Yoshino or St. Thomas Aquinas would argue.<sup>40</sup> This means natural law can come from secular sources, and an atheist could believe in natural law through right reason or rational sources.

An all-encompassing definition of natural law would not only contrast itself with positive law but would rather show how it, "relates to positive law by serving as a standard against which positive law can be judged. Natural law is frequently cited as the 'ought' and positive law as the 'is,' meaning that natural law is what should be done and positive law is what exists as the rule established by the sovereign."<sup>41</sup>

Alternatively, positive law is commonly referred to as law passed by legislatures or case law. For a succinct definition, "[e]very positive law, or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme."<sup>42</sup>

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*psuche* as the active organization of a body that has life, potentially, or *dunamei*). Of course, as Aristotle immediately points out, one is alive only when the body is *actually* alive, thus meeting all the "external" conditions for the presence of *psuche*. See *id.*; see also Martha C. Nussbaum, *Commentary on ARISTOTLE, DE MOTU ANIMALIUM* 271, 363–64 (Martha Craven Nussbaum trans., 1978) (discussing ARISTOTLE, DE MOTU ANIMALIUM 702a30–31, 703b29–32).

Martha Nussbaum, *The Supreme Court: 2006 Term: Foreword: Constitutions And Capabilities: "Perception" Against Lofty Formalism*, 121 HARV. L. REV. 4, 34 n.87 (2007).

<sup>38</sup> Yoshino, *supra* note 37, at 1843.

<sup>39</sup> Bruce D. Fisher, *The Ethical Consumer: A Rejecter of Positive Law Arbitrage*, 25 SETON HALL L. REV. 230, 245 (1994).

<sup>40</sup> Natural law can find its roots as far as the Ancient Greeks and Aquinas. Martin Rhonheimer, *Natural Law as a "Work of Reason": Understanding the Metaphysics of Participated Theonomy*, 55 AM. J. JURIS. 41, 47, 50. See generally, Philip A. Hamburger, *Natural Rights, Natural Law, and American Constitutions.*, 102 YALE L.J. 907 (1993).

<sup>41</sup> Fisher, *supra* note 41, at 245–46.

<sup>42</sup> Linda Meyer, *"Nothing We Say Matters": Teague and New Rules*, 61 U. CHI. L. REV. 423, 460 n.170 (1994). The author goes on to explain how,

[Positive law] ... is set by a monarch, or sovereign number, to a person or persons in a state of subjection to its author. John Austin, *The Province of Jurisprudence Determined and The Uses of the Study of Jurisprudence* 132 (Noonday, 1954). See also Frederick Schauer, *Constitutional Positivism*, 25 CONN. L. REV. 797, 799 (1993) (Legal positivism takes the position that the law "is not derived necessarily from fundamental moral principles, but rather is simply posited' by human beings and human institutions."), and the bibliography of major theorists cited therein.

*Id.* at 460 n. 170.

However, Professor Nonet, discusses the essence of positive law in relation to Nietzsche's philosophy:

What is positive law? We may begin with the familiar account that the word "positive" suggests immediately: positive law (Nietzsche calls it *Gesetz*) is law that exists by virtue of being posited (*gesetzt*), laid down and set firmly, by a will empowered so to will. Such

## 2. Justice and Plato

In regards to the Platonic Soul, a person acts justly if the soul acts in concordance with each constituent part without overstepping its reach. A person acts unjustly if the soul acts in an unbalanced manner.<sup>43</sup> Likewise, an unbalanced soul may follow any means necessary in Machiavellian fashion to reach a desirable goal.<sup>44</sup> Choosing between what is viewed as natural law and positive law can depend on the balance of the soul.<sup>45</sup> Indeed, in Sophocles' play *Antigone*, the eponymous character suffered such a choice between following positive law or natural law when deciding to follow the edicts of King Creon not to bury her brother or her religious beliefs to bury her brother.<sup>46</sup> Perhaps this choice between natural law<sup>47</sup> and positive law<sup>48</sup>—also phrased as choosing between what is “right” and following the law—is one of the fundamental cruxes of jurisprudence.<sup>49</sup> An informed viewpoint on the Platonic conception of the soul can help analyze choices between positive and natural law, understand the structure of the Constitution, and explain why former choices had been made and why some decisions in the Supreme Court and Congress are made the way that they are.

## 3. Truth, Justice, and Plato

Thus, Plato intimately intertwines truth and justice. The Platonic forms—eternal ideals—represent truth.<sup>50</sup> Concurrently, justice represents human activity carrying out and adhering to the truth of the forms. However, how can human

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law "exists" in the sense that it has validity (*Geltung*). It has validity if the will (*Wille*) from which it issues has the power (*Macht*) to impose it, to demand and secure obedience to its command.

Philippe Nonet, *What Is Positive Law?*, 100 YALE L.J. 667, 667–68 (1990).

<sup>43</sup> PLATO, *REPUBLIC*, *supra* note 2, at 608c–621d.

<sup>44</sup> NICCOLO MACHIAVELLI, *THE PRINCE* (Harvey C. Mansfield, Jr., trans., Univ. of Chi. Press 1985)(n.d).

<sup>45</sup> Cf. Christopher Bobonich, *Persuasion, Compulsion, and Freedom in Plato's Laws*, 41 CLASSICAL Q. 365 (1991).

<sup>46</sup> Albert Grande, *Education as a Natural Right*, 21 ST. JOHN'S J. LEGAL COMMENTARY 53, 54 (2006).

Antigone, with clear conscience, deliberately violates King Creon's law that denies her brother a decent burial. Her brother had been a rebel and was thereby denied the honor of a proper burial. Antigone appeals to the higher unwritten laws of God, the eternal natural laws. While it is unknown when those laws originated, Antigone's act of defiance violates written laws in favor of natural law, which respects a sister's right to bury her brother, despite the king's prohibition.

<sup>49</sup> MARCUS TULLIUS CICERO, *DE RE PUBLICA DE LEGIBUS*, 1.18, at 316–17 (Clinton Walker Keyes, trans., Harv. Univ. Press 2014) (n.d) (ebook) (“Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite.”). It is interesting to consider how positive law is rooted in nature.

<sup>50</sup> Veronica Gentilli, *A Double Challenge for Critical Race Scholars: The Moral Context*, 65 S. Cal. L. Rev. 2361, 2368 (1992).

On the Platonic view, concepts are immutable and eternal; they exist independently of the world around us. Plato calls these concepts of independent and necessary truths “Forms.” For Plato, the Forms, or concepts, are reality; things in the world have only diminished reality since they are imperfect replicas of the Forms. Thus, a chair in the world is but an imperfect reflection of the concept, the abstract idea, of “Chairhood.” The material world is true and real only to the degree that it accurately reflects the Forms. We call a particular object a chair because we recognize it as an instantiation of the Form of Chairhood.

activity carry truth to achieve justice? This requires the elements of the Platonic soul to exist in a balance. But what is the Platonic soul? What are its elements? How can they exist in harmony?

## II. THREE PARTS OF THE FEDERAL GOVERNMENT

### *The Judiciary*

The role of judiciary in large extent is to follow syllogistic and logical application of the law as found in the idea of *stare decisis et non quietamovere*,<sup>51</sup> to provide a system of legitimacy and predictability.<sup>52</sup> As the Ninth Circuit Court of Appeals stated, “[s]tare decisis is the policy of the court to stand by precedent; the term is but an abbreviation of *stare decisis et non quietamovere* - ‘to stand by and adhere to decisions and not disturb what is settled.’”<sup>53</sup>

However, pure syllogistic thinking manifested in *stare decisis* does not always occur. Although Justice Rehnquist—writing for the majority in *Payne v.*

<sup>51</sup> See *Petersen v. Magna Corp.*, 484 Mich. 300, 314 (Mich. 2009).

*Stare decisis* is short for *stare decisis et non quietamovere*, which means “stand by the thing decided and do not disturb the calm.” *Stare decisis* attempts to balance two competing considerations: the need of the community for stability in legal rules and decisions and the need of courts to correct past errors. This doctrine has been part of the American legal landscape since the country's formation.

The Court further noted “[t]he doctrine can be traced back to medieval England.” *Id.* at 387 n. 38.

See also Thomas Healy, *Stare Decisis as a Constitutional Requirement*, 104 W. VA. L. REV. 43, 56–62 (2001) (hereinafter “Healy”). However, the article itself notes that very few cases were recorded during the Anglo-Saxon period. However, there were many records of Anglo-Saxon and Norman history such as the ANGLON-SAXON CHRONICLE D: COTTON TIBERIUS B IV (1067), ENGLISH HISTORICAL DOCUMENTS 150 (David C. Douglass & George W. Greenaway eds., Oxford Univ. Press 2d ed.1981). Indeed, there are even visual representations, such as the *Bayeux Tapestry*. See THE BAYEUX TAPESTRY, A COMPREHENSIVE SURVEY (Sir Frank Stenton ed., Phaidon Press rev. ed. 1965).

But earlier Roman law was itself a compilation of cases in digests, which Roman lawyers would reference. Shael Herman, *Legacy and Legend: The Continuity of Roman and English Regulation of the Jews*, 66 TUL. L. REV. 1781, 1797 (1992). Even as early as the 1<sup>st</sup> Century B.C. “Cicero praised his friend, the jurist Servius Sulpicius Rufus for using dialectic and treating law as [a science],” indicating that — much like the modern method of using case law—Romans treated like cases alike. James Gordley, *The Method of the Roman Jurists*, 87 TUL. L. REV. 933, 947 n.73 (2013). See generally PETER STEIN, *REGULAE IURIS: FROM JURISTIC RULES TO LEGAL MAXIMS* (1966).

By 1256 Henry de Bracton wrote of the importance of using past precedent he experienced previously to decide current cases before him, as indicated by his saying, “(i)f any new and unusual matters arise, which have not before been seen in the realm, if like matters arise let them be decided by like since the decision is a good one for proceeding a similibus ad similia.” Healy, *supra*, at 56–57.

<sup>52</sup> Henry Paul Monaghan, *Stare Decisis and Constitutional Adjudication*, 88 COLUM. L. REV. 723, 749–752 (1988).

<sup>53</sup> *United States IRS v. Osborne (In re Osborne)*, 76 F.3d 306, 309 (9th Cir. 1996).

Moreover, that court unpacked the etymology of *stare decisis* writing,

[c]onsider the word “*decisis*.” The word means, literally and legally, the decision. Nor is the doctrine *stare dictis*; it is not “to stand by or keep to what was said.” Nor is the doctrine *stare rationibus decidendi*—“to keep to the *rationes decidendi* of past cases.” Rather, under the doctrine of *stare decisis* a case is important only for what it decides—for the “what,” not for the “why,” and not for the “how.” Insofar as precedent is concerned, *stare decisis* is important only for the decision, for the detailed legal consequence following a detailed set of facts.

*Id.* at 309.

Tennessee—admits, “*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”<sup>54</sup> Moreover, regarding policy, Rehnquist writes, “[a]dhering to precedent ‘is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right.’”<sup>55</sup> However, he claims “when governing decisions are unworkable or are badly reasoned, ‘this Court has never felt constrained to follow precedent.’”<sup>56</sup> In other words, “*Stare decisis* is not an inexorable command; rather, it ‘is a principle of policy and not a mechanical formula of adherence to the latest decision.’”<sup>57</sup> Justice Rehnquist further indicates that the claim that *stare decisis* is a principle of policy is “particularly true in constitutional cases, because in such cases ‘correction through legislative action is practically impossible.’”<sup>58</sup>

Rehnquist’s opinion on *stare decisis* has been affirmed and restated in several Supreme Court opinions, recently in *Johnson v. United States*, where Justice Scalia’s majority opinion stated that “[t]he doctrine of *stare decisis* allows us to revisit an earlier decision where experience with its application reveals that it is unworkable,” showing how experience can inform application of *stare decisis*.<sup>59</sup>

At first, this move away from purely logical toward using “experience” may seem like a contradiction of the purely logical aspect of the *logos* in the Platonic soul. Indeed, this is not akin to the *elegantia juris* using pure logic in law as envisioned by the Romans.<sup>60</sup> Rather, it is more similar to Oliver Wendell Holmes’s legal realism as expressed in his book *The Common Law*, “[t]he life of the law has not been logic: it has been experience.”<sup>61</sup> Indeed, Holmes criticized the purely scientifically logical methods proposed by Professor Christopher Columbus Langdell<sup>62</sup> that he “could be suspected of ever having troubled himself about Hegel,

<sup>54</sup> *Payne v. Tennessee*, 501 U.S. 808, 827, 737–738 (1991).

<sup>55</sup> *Id.* at 738 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932)(Brandeis, J., dissenting)).

<sup>56</sup> *Id.* at 827, (quoting *Smith v. Allwright*, 321 U.S. 649, 665 (1944)).

<sup>57</sup> *Id.* at 828 (quoting *Helvering v. Hallock*, 309 U.S. 106, 119 (1940)).

<sup>58</sup> *Id.* at 831 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting)).

<sup>59</sup> *Johnson v. United States*, 135 S. Ct. 2551, 2562 (2015).

<sup>60</sup> Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787, 861 (1989).

<sup>61</sup> OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (Mark DeWolfe Howe ed., Harv. Univ. Press 1963) (1881).

<sup>62</sup> Andrew P. Morriss, *Codification and the Right Answers*, 74 CHI.-KENT L. REV. 355 (1999).

*C.f. id.* n.161 “The Civil Code of the State of New York (pt. 1), 2 ALB. L.J. 385, 385 (1870). This was the idea behind the case method introduced by Christopher Columbus Langdell at Harvard Law School in 1870, where Carter had trained. See Wiecek, *supra* note 10, at 92–93.”

Indeed, many legal scholars,

have long viewed Christopher Columbus Langdell, the Dean of Harvard Law School from 1870 to 1895, as the prototypical American jurist of the late nineteenth century. He portrayed the common law as a conceptually-ordered scientific system in which rigorous logical reasoning trumped concerns about the just resolution of particular cases. In Langdell’s Orthodoxy, probably the most influential modern article on Langdell, Thomas Grey dubbed this system of legal thought “classical orthodoxy.” Others have labeled it “mechanical jurisprudence,” “classical legal thought,” “liberal legal science,” or “Langdellian formalism.” Whatever term they have preferred, scholars have long agreed that Gilded Age legal thinkers viewed the common law as a rigidly logical, amoral system.

Lewis A. Grossman, *Langdell Upside-Down: James Coolidge Carter and the Anticlassical Jurisprudence of Anticodification*, 19 YALE J.L. & HUMAN. 149, 150 (2007).

we might call him a Hegelian in disguise, so entirely is he interested in the formal connection of things, or logic, as distinguished from the feelings which make the content of logic, and which have actually shaped the substance of the law.”<sup>63</sup>

Indeed this mode of realism could come into action in judicial decisions specifically with “sociological jurisprudence”—proposed by Roscoe Pound—whereby courts could consider social factors in decision making.<sup>64</sup> Furthermore, Holmes wrote that even decisions that appear to be based on firm logical deductions are actually decisions of policy, stating that “[p]erhaps one of the reasons why judges do not like to discuss questions of policy, or to put a decision in terms upon their views as law-makers, is that the moment you leave the path of merely logical deduction you lose the illusion of certainty which makes legal reasoning seem like mathematics.”<sup>65</sup> He declared, however, that choosing the premises, being the choice of policy then using logical deductions from there, for “certainty is only an illusion, nevertheless.”<sup>66</sup>

### *Executive*

A prime example of the outline of the definition of the Executive branch’s power is seen in *Youngstown Sheet & Tube Co. v. Sawyer*.<sup>67</sup> The case rose as a result of the steel strikes during the Truman Administration during the Korean War when President Truman sought to take executive control over the steel producers under the inherent powers doctrine.<sup>68</sup>

Writing for the majority opinion, Justice Black stated the Presidential and Executive power “must stem either from an act of Congress or from the Constitution itself.”<sup>69</sup>

The Court’s majority opinion stated that the Court could not “with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation’s lawmakers, not for its military authorities.”<sup>70</sup>

Furthermore, the Court declared that “[i]n the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea

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<sup>63</sup> Oliver W. Holmes, Jr., *Book Notices*, 14 AM. L. REV. 233, 234 (1880) (reviewing CHRISTOPHER COLUMBUS LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, WITH A SUMMARY OF THE TOPICS COVERED BY THE CASES (1880)).

Holmes continued a sentence later,

[t]he form of continuity has been kept up by reasonings [*sic*] purporting to reduce every thing to a logical sequence; but that form is nothing but the evening dress which the new-comer puts on to make itself presentable according to conventional requirements. The important phenomenon is the man underneath it, not the coat; the justice and reasonableness of a decision, not its consistency with previously held views... As a branch of anthropology, law is an object of science; the theory of legislation is a scientific study; but the effort to reduce the concrete details of an existing system to the merely logical consequences of simple postulates is always in danger of becoming unscientific, and of leading to a misapprehension of the nature of the problem and the data.

*Id.*

<sup>64</sup> Roscoe Pound, *Mechanical Jurisprudence*, 8 COLUM. L. REV. 605, 606 (1908).

<sup>65</sup> Oliver W. Holmes, Jr., *Privilege, Malice, and Intent*, 8 HARV. L. REV. 1, 7 (1894).

<sup>66</sup> *Id.*

<sup>67</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>68</sup> *Id.* at 582–585.

<sup>69</sup> *Id.* at 585.

<sup>70</sup> *Id.* at 587.

that he is to be a lawmaker.”<sup>71</sup> This means that the Constitution limits the Executive’s rulemaking force. Instead, the Court continues interpreting the Constitution so as to give power to the legislature to make rules: “‘All legislative Powers herein granted shall be vested in a Congress of the United States . . . .’ After granting many powers to the Congress, Article I goes on to provide that Congress may ‘make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.’”<sup>72</sup>

Finally—perhaps in an originalist interpretation fashion—the Court declared that “[t]he Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.”<sup>73</sup> As a result of the case, in the concurring opinion Justice Frankfurter wrote “[l]oose and irresponsible use of adjectives colors all nonlegal and much legal discussion of presidential powers. ‘Inherent’ powers, ‘implied’ powers, ‘incidental’ powers, ‘plenary’ powers, ‘war’ powers and ‘emergency’ powers are used, often interchangeably and without fixed or ascertainable meanings.”<sup>74</sup>

Discussing the Separation of Powers in his concurring opinion, Justice Frankfurter, quoting Justice Brandeis, stated,

[t]he doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.<sup>75</sup>

In relation to the *thumos*, *Youngstown Sheet & Tube Co.* represents how the Executive branch is limited in its functions of making laws but it carries out these laws. The Executive may resolve conflicts through agencies, specifically through the *Chevron* deference doctrine, whereby the Supreme Court decided that “considerable weight should be accorded to an executive department’s construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations.”<sup>76</sup>

Justice Stevens wrote: “[i]n the Clean Air Act Amendments of 1977,<sup>77</sup> Congress enacted certain requirements applicable to States that had not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation.”<sup>78</sup> He continued stating that, “[t]he amended Clean Air Act required these ‘nonattainment’ States to establish a permit program regulating ‘new or modified major stationary sources’ of air pollution.”<sup>79</sup>

<sup>71</sup> *Id.* at 587.

<sup>72</sup> *Id.* at 588 (quoting U.S. CONST. art. I, § 1).

<sup>73</sup> *Id.* at 589.

<sup>74</sup> *Id.* at 646–47 (Frankfurter, J., concurring).

<sup>75</sup> *Id.* at 629 (quoting *Myers v. United States*, 272 U.S. 52, 240, 293 (1926)).

<sup>76</sup> *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

<sup>77</sup> Pub. L. 95-95, 91 Stat. 685.

<sup>78</sup> *Id.* at 839–40.

<sup>79</sup> *Id.* at 840.

Furthermore, the EPA required that plants comply with a certain level of conditions.<sup>80</sup> The issue of the case was “whether EPA’s decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single “bubble” is based on a reasonable construction of the statutory term “stationary source.”<sup>81</sup>

The Court reasoned that when reviewing an agency’s construction of a statute, it must ask two questions.<sup>82</sup> The first question is “whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”<sup>83</sup> The second question arises if “Congress has not directly addressed the precise question at issue...the question for the court is whether the agency’s answer is based on a permissible construction of the statute,” meaning the court defers to an agency’s interpretation.<sup>84</sup> Concurrently, if the agency does not have an interpretation, the court would interpret the statute.<sup>85</sup>

The Court reasoned and “justified this new general rule of deference by positing that Congress has implicitly delegated interpretive authority to all agencies charged with enforcing federal law.”<sup>86</sup> Indeed, the “the decision [made] administrative actors the primary interpreters of federal statutes and relegate courts to the largely inert role of enforcing unambiguous statutory terms.”<sup>87</sup>

### *The Legislative*

Given the example of the Eighteenth Amendment, Congress passed a law representing a *will* of portions of the country to prohibit alcohol. But as the Twenty-first Amendment shows, the Eighteenth Amendment did not accurately represent what people desired. In a sense, the Eighteenth Amendment represented the soul of the polity losing control. This was initially an unjust result, although deemed just at the time, and so Congress repealed it, deciding that the Twenty-first Amendment was just, and the Eighteenth, consequently, was deemed unjust.

The need for rules of statutory interpretation indicates the necessity of interpreting complex laws.<sup>88</sup> This could result from many factors, such a quick drafting or political maneuvering to gain votes.<sup>89</sup> Professor Gluck has pointed out that much of the public outcry against the courts and the legislature exists because we do not have a clear idea of what they should be doing:

These moves have been grounded in a spectacular lack of theory about the role that courts should play in the legislative process itself—which is, after all, the fundamental constitutional question of the Court-Congress relationship in statutory cases. Should courts try to understand how

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 843.

<sup>83</sup> *Id.* at 842–43.

<sup>84</sup> *Id.* at 843.

<sup>85</sup> *Id.*

<sup>86</sup> Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 *YALE L.J.* 969, 969 (1992).

<sup>87</sup> *Id.* at 969–70.

<sup>88</sup> Abbe R. Gluck, Comment, *Imperfect Statutes, Imperfect Courts: Understanding Congress’s Plan in the Era of Unorthodox Law Making*, 129 *HARV. L. REV.* 62, 63 (2015).

<sup>89</sup> Cristina Marcos & Sarah Ferris, *House Votes to Repeal ObamaCare*, *THE HILL* (Dec. 8, 2015), <http://thehill.com/policy/healthcare/231638-house-votes-to-repeal-obamacare> [<http://perma.cc/C7FH-LV65>].

Congress works, or is Congress too complex to understand? Should courts be "tough" on Congress, perhaps to incentivize Congress to draft better the next time, or should courts cut Congress some slack, and even correct enacted imperfections? Perhaps courts are best conceived as guardians of the U.S. Code, obligated to shape increasingly imperfect statutes into a more coherent product for the public, no matter how disconnected that result may be from Congress's own intentions. The Court has long resisted definitively answering these basic questions, even as the most difficult statutory cases turn on them.<sup>90</sup>

Indeed, the problem with the legislature or courts not conforming to its theoretical role within the three branches of government has occurred in other branches as well, including the judiciary with the Supreme Court. Even "[t]he Warren Court understood the problems and the promises of politics from its own experience. The Court numbered among its members former senators, representatives, and state legislators, a former governor and a former mayor, and former cabinet members."<sup>91</sup>

Moreover, there does not seem to be a uniform system of interpreting statutes, despite its importance in courts upholding the rules.<sup>92</sup> Consequently, some argue for adopting a uniform system of statutory interpretation.<sup>93</sup> Indeed, there could be problems with using different types of statutory analysis within courts because one method may work in one case but not another, yet the subsequent courts would be urged to use precedent from the former case.<sup>94</sup> Alternatively, others argue against a uniform system of statutory interpretation because such a system could lead to a rigid system of *stare decisis* for interpreting statutes.<sup>95</sup> However, despite several states having adopted "methodological" and "formalistic" *stare decisis*,<sup>96</sup> it is unclear whether the method produces equitable results.<sup>97</sup>

<sup>90</sup> Gluck, *supra* note 88, at 63.

<sup>91</sup> Pamela S. Karlan, *Foreword: Democracy and Disdain*, 126 HARV. L. REV. 1, 5 (2012).

<sup>92</sup> Carlos E. Gonzalez, *Reinterpreting Statutory Interpretation*, 74 N.C.L. REV. 585, 588 (1996).

<sup>93</sup> E.g., Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1754 (2010) ("Methodological *stare decisis*—the practice of giving precedential effect to judicial statements about methodology—is generally absent from the jurisprudence of mainstream federal statutory interpretation, but appears to be a common feature of some states' statutory case law.").

<sup>94</sup> Brian G. Slocum, *Overlooked Temporal Issues in Statutory Interpretation*, 81 TEMP. L. REV. 635, 637–38 (2008) (illustrating some of the problems of using different types of statutory analysis with courts, because one method may work in one case, but not in another).

<sup>95</sup> Glen Staszewski, *The Dumbing Down of Statutory Interpretation*, 95 B.U.L. REV. 209, 217–19 (2105) (arguing against a uniform system of statutory interpretation).

<sup>96</sup> Gluck, *supra* note 91, at 1754 n.8 (expanding on the terms explaining that "[b]y 'formalistic,' I mean clearly defined, ex ante interpretive rules arranged to be applied in a consistent order. But the characteristics of the particular rules chosen (for instance, whether and when legislative history may be consulted) need not themselves be rigid. Cf. Cass R. Sunstein, *Must Formalism Be Defended Empirically?*, 66 U. Chi. L. Rev. 636, 638 (1999) ("Formalist strategies... entail three commitments: to promoting compliance with all applicable legal formalities (whether or not they make sense in the individual case), to ensuring rule-bound law... and to constraining the discretion of judges...").

<sup>97</sup> Sydney Foster, *Should Courts Give Stare Decisis Effect to Statutory Interpretation Methodology?*, 96 GEO. L.J. 1863 (2008).



Although the legislatures have utmost formality, such Robert's *Rules of Order*<sup>98</sup> or Thomas Jefferson's *Manual of Parliamentary Practice*,<sup>99</sup> statutes that from Congress are often unclear.

### III. PLATO'S SOUL

#### A. *Welcome to Plato's Soul*

Before an understanding of how the Platonic soul functions within the United States federal government, a brief outline of Plato's conception of the soul is required. Plato wrote that the soul (ψυχή) consists of three parts: the λογιστικόν (logical), the θυμοειδές (thymotic/spirit), and the ἐπιθυμητικόν (appetitive/erotic).<sup>100</sup> Concurrently, a person has all three parts within herself or himself and acts justly if all the parts of the soul act as it is supposed to act.<sup>101</sup> If each part of the soul and each part of the city conduct their activities according to their "nature" or part of the soul, then all three parts of both city and individual will produce justice.<sup>102</sup>

#### B. *Logos*

*Logos* (λογιστικόν)<sup>103</sup> in the Platonic sense represents the part of the soul that loves knowledge and the search for knowledge.<sup>104</sup> The word in itself has a unique concept behind it: "λογιστικόν is one of Plato's many synonyms for the intellectual principle. Cf. 441 C, 571 C, 587 D, 605 B. It emphasizes the moral calculation of consequences, as opposed to blind passion."<sup>105</sup> This idea can be compared to the section in the *Phaedrus* where "Socrates compares the soul to a charioteer who controls two horses—one white and docile and the other black and intemperate. These three figures echo the division of the soul into reason, emotion, and appetite in Book IV of the Republic."<sup>106</sup> The charioteer is *logos* keeping control of the two horses.

<sup>98</sup> HENRY ROBERT, *ROBERT'S RULES OF ORDER NEWLY REVISED* (Sarah Corbin Robert ed., 9th ed.1990). See also Saul Levmore, *Parliamentary Law, Majority Decisionmaking, And The Voting Paradox*, 75 VA. L. REV. 971 (1989).

<sup>99</sup> THOMAS JEFFERSON, *JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE* (1801), reprinted in *Rules of the House of Representatives*, H.R. Doc. No. 279, 99th Cong., 2d Sess. (1987).

<sup>100</sup> PLATO, *REPUBLIC*, *supra* note 2, at 443c–e.

<sup>101</sup> PLATO, *REPUBLIC*, *supra* note 2, at 441d12–e2.

<sup>102</sup> PLATO, *REPUBLIC*, *supra* note 2, at 433a (Socrates stated, "[a]nd what we did lay down, and often said, you recall, was that each one man must perform one social service in the state for which his nature is best adapted." Likewise, if this does not happen, then there would be injustice (ἀδικία)).

<sup>103</sup> Henry George Liddell & Robert Scott, *AN INTERMEDIATE GREEK-ENGLISH LEXICON*, available at <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0058%3Aentry%3Dlogistikos%20Fs> (Etymologically speaking, The Liddell & Scott's A Greek-English Lexicon defines the word as, "λογιστικός from λογιστής 1 I. skilled or practised in calculating, Xen., Plat.— ή λογιστική (sc. τέχνη), arithmetic, Plat. II. endowed with reason, rational, Arist.:— τὸ λ. the reasoning faculty, Plat. 2. using one's reason, reasonable, Xen.").

<sup>104</sup> PLATO, *REPUBLIC*, *supra* note 2, at 435e.

<sup>105</sup> PLATO, *REPUBLIC*, *supra* note 2, at 439d, n.8 ("Cf. *Crito* 46 B (one of the passages which the Christian apologists used to prove that Socrates knew the λόγος), *Theaetetus* 186 C ἀναλογίσματα πρότρεουσὶαν καὶ ὀφέλειαν, and *Laws* 644 D. Aristotle *Eth.* 1139 a 12 somewhat differently.").

<sup>106</sup> See generally, Yoshino, *supra* note 37.



distinct.

The analogy between the righteous city and the righteous soul is continued throughout this section. It should be noted however that the parallel is no longer quite exact. The difference between θυμοειδές and λογιστικόν in the soul is greater than that between auxiliaries and rulers in the State: for the λογιστικόν is not a select part of the θυμοειδές—as the rulers are of the soldiers—but something generically distinct from it. Otherwise the analogy holds (with the reservations mentioned on 435 A).<sup>112</sup>

Further, this key concept of thumos/spirit (θυμός) can be described as the:

distinctively Platonic sense of θυμός as the power of noble wrath, which, unless perverted by a bad education, is naturally the ally of the reason, though as mere angry passion it might seem to belong to the irrational part of the soul, and so, as Glaucon suggests, be akin to appetite, with which it is associated in the mortal soul of the *Timaeus* 69 D. In *Laws* 731 B-C. Plato tells us again that the soul cannot combat injustice without the capacity for righteous indignation. The Stoics affected to deprecate anger always, and the difference remained a theme of controversy between them and the Platonists. Cf. Schmidt, *Ethik der Griechen*, ii. pp. 321 ff., Seneca, *De ira*, i. 9, and *passim*. Moralists are still divided on the point. Cf. Bagehot, *Lord Brougham*: “Another faculty of Brougham . . . is the faculty of easy anger. The supine placidity of civilization is not favorable to animosity [Bacon's word for θυμός].” Leslie Stephen, *Science of Ethics*, pp. 60 ff. and p. 62, seems to contradict Plato: “The supposed conflict between reason and passion is, as I hold, meaningless if it is taken to imply that the reason is a faculty separate from the emotions,” etc. But this is only his metaphysics. On the practical ethical issue he is with Plato.<sup>113</sup>

#### *E. The Platonic Soul Overall*

Essentially, the Platonic soul (ψυχή) consists of three parts: the λογιστικόν (logical), the θυμοειδές (thymotic/spirit), and the ἐπιθυμητικόν (appetitive/erotic). Each part represents an integral part of human functioning, but there must be a balance among the parts for justice to exist.

#### IV. COMPARING THE STRUCTURE OF THE FEDERAL GOVERNMENT TO THE

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<sup>112</sup> *Id.*

<sup>113</sup> PLATO, PLATO IN TWELVE VOLUMES, *supra* note 110, at 439(e) n.1.

## PLATONIC SOUL

A. Judiciary as *Logos*1. Explaining Why the Judiciary is Not *Thumos*

The judiciary<sup>114</sup> in this paper's paradigm represents *logos*. *Logos* is part of the Platonic part of the soul that represents logic.<sup>115</sup> This contrasts with Professor Covitz's formulation of the judiciary representing the *thumos*. His argument is compelling; however, in the *Republic*, Socrates states that a person "watering and fostering the growth of the rational principle [*logos*] in his soul and the others the appetitive and the passionate [two representing *eros*]," and this specific person "is not by nature of a bad disposition but has fallen into evil communications," meaning this person has not become evil but is just in between the pull of *logos* and *eros*.<sup>116</sup> Socrates says this tension will resolve in "a compromise and turns over the government in his soul to the intermediate principle of ambition and high spirit and becomes a man haughty of soul and covetous of honor [meaning a turn to the *thymotic* part of the soul]."<sup>117</sup>

This indicates that one will likely turn to politics while in the tension of *logos* and *eros*, and in other words has become *thymotic*. This is more akin to the President, a politician, who in all likelihood is in search of honor, much like other politicians. Because if the executive of the country did not seek honor or maintain some "haughtiness," other politicians and world leaders would take advantage of us. She must be a decisive president, not merely logical. Yet, logic—as well as *eros*—may exist within her, but as President she must have a prevailing *thymotic* element.

This is in sharp contrast to the Article III judges, especially. These judges—as intended by the framers of the Constitution—were not and are not politicians seeking re-election.<sup>118</sup> Rather, they are aloof from the political system seeking to interpret and apply the law.<sup>119</sup> This logical analysis—which can be informed with the other elements of the soul—is the guiding principal of the judiciary. The judiciary represents *logos*.

3. Cases and Examples Showing Why the Judiciary Represents *Logos*

In the *Phaedrus*, Socrates designates the charioteer as *logos* keeping control of the *eros* and *thumos*. Likewise, Chief Justice Marshall said, "it is emphatically the province and duty of the judicial department to say what the law

<sup>114</sup> "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. CONST. art. III, § 1; Further, Chief Justice Marshall in *Marbury v. Madison* stated, "[t]he particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument." 5 US 137 (1 Cranch) at 180.

<sup>115</sup> W.K.C. GUTHRIE, *A HISTORY OF GREEK PHILOSOPHY* 419–34 (Cambridge Univ. Press 1962).

<sup>116</sup> PLATO, *REPUBLIC*, *supra* note 2, at 550b.

<sup>117</sup> *Id.*

<sup>118</sup> Saikrishna Prakash & Steven D. Smith, *How to Remove A Federal Judge*, 116 YALE L.J. 72, 87–88 (2006)

<sup>119</sup> *Id.* at 136–37.

is.”<sup>120</sup> The Supreme Court uses judicial review and interprets the Constitution and legislatively passed statutes to keep them in check much like the charioteer in Plato’s *Phaedrus*.

When constituent parts of the soul become imbalanced, then unjust results arise, as in *Plessy v. Ferguson*.<sup>121</sup> However, imbalance and stepping out of a role in the separate powers may lead to more just and fair results, as in *Brown v. Board of Education*.<sup>122</sup>

In *Plessy v. Ferguson*, the Supreme Court stepped out of its judicial authority and took on a legislative function, but with an unjust result. The Court statutorily declared that a “[s]tate, shall provide equal but separate accommodations” for members of different races.<sup>123</sup>

In *Brown v. Board of Education*,<sup>124</sup> the Supreme Court stepped out of its judicial authority and took on a legislative function but with a just result. In *Brown*, the Court noted that “[t]he doctrine of ‘separate but equal’ did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*... involving not education but transportation,” showing that the Court in *Plessy* stepped out of its mode of *stare decisis* and made law based on no previous law.<sup>125</sup>

Most recently, in *Obergefell v. Hodges*,<sup>126</sup> the public was split, with many in the United States appreciating the decision, and others seeing it as a violation of natural law. Either way, the Supreme Court took on a legislative role in deciding the case. As Professor Kenji Yoshino writes,

[w]hile *Obergefell*’s most immediate effect was to legalize same-sex marriage across the land, its long-term impact could extend far beyond this context. To see this point, consider how much more narrowly the opinion could have been written. It could have invoked the equal protection and due process guarantees without specifying a formal level of review, and then observed that none of the state justifications survived even a deferential form of scrutiny. The Court had adopted this strategy in prior gay rights cases.<sup>127</sup>

<sup>120</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); see also *United States v. Nixon*, 418 U.S. 683, 703–05 (1974).

<sup>121</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896).

<sup>122</sup> *Brown v. Board of Education*, 349 U.S. 294 (1955).

<sup>123</sup> *Plessy*, 163 U.S. at 540.

<sup>124</sup> *Brown*, 349 U.S. at 294.

<sup>125</sup> *Brown v. Board of Education*, 347 U.S. 483, 490–91 (1954).

<sup>126</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

<sup>127</sup> Kenji Yoshino, *A New Birth of Freedom?: Obergefell v. Hodges*, 129 HARV. L. REV. 147, 147. (2015).

Illustrating the differences of originalist and evolutionary document theories of interpreting the Constitution, Andrew W. Schwartz writes discussing the *Obergefell* case:

The majority and dissenting opinions in *Obergefell v. Hodges*, the Supreme Court’s recent decision finding that same-sex marriage is a constitutional right, offer a lucid comparison of originalism with evolutionary document theories of interpretation. The majority point out that the institution of marriage “has evolved over time.” *Obergefell v. Hodges*, No. 14-556, slip op. at 6 (U.S. June 26, 2015). Finding that the right to marry the person of one’s choice, regardless of their gender, was compelled by the due process clause of the Fourteenth Amendment, the majority described its task as interpreting a constitutional provision that sets forth broad principles rather than specific requirements. History and tradition guide and discipline this inquiry but do

Professor Laurence Tribe supports this position by stating,

Professor Kenji Yoshino's splendid Comment makes clear just how misguided these glib detractions are, and eloquently elaborates the important doctrinal work done by Justice Kennedy's decision, which represents the culmination of a decades-long project that has revolutionized the Court's fundamental rights jurisprudence. As Yoshino demonstrates, *Obergefell* has definitively replaced *Washington v. Glucksberg*'s wooden three-prong test focused on tradition, specificity, and negativity with the more holistic inquiry of Justice Harlan's justly famous 1961 dissent in *Poe v. Ullman*, a mode of inquiry that was embodied in key opinions from the mid-1960s to the early 1970s.<sup>128</sup>

Over time, society may come to a consensus of whether the Court decided the case correctly, but it currently serves as an example of a Court decision stepping out of the bounds of the role of the judiciary and acting in a way to solve aspects that the legislature could not fix in terms of Constitutional guarantees.<sup>129</sup>

Although ideally the Court would follow *logos*, the catch is that the members of the Court are not purely guided by *logos*—as to be expected—because all humans, according to Plato, have three aspects of the soul within themselves.

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not set its outer boundaries. That method respects our history and learns from it without allowing the past alone to rule the present. The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all person to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.

*Id.* at 10-11 (citations omitted). In sharp contrast, Chief Justice Roberts and Associate Justice Alito, in their dissenting opinions, refused to recognize contemporary views of marriage, asserting that the notion of marriage as solely between a man and a woman is 'deeply rooted in this Nation's history and tradition.' *Id.* at 14 (Roberts, C.J., dissenting); *Id.* at 2 (Alito, J., dissenting) (quoting *Washington v. Glucksberg*, 521 U.S. 701, 720-21 (1997)). Justice Scalia, in a separate dissent, relied on the public understanding of the meaning of marriage at the time the due process clause was ratified in 1868, which, he argued, universally confined marriage to a man and a woman. *Id.* at 4 (Scalia, J., dissenting).

Andrew W. Schwartz, *No Competing Theory of Constitutional Interpretation Justifies Regulatory Takings Ideology*, 34 STAN. ENVTL. L.J. 247, 259 n.43. (2015).

<sup>128</sup> Laurence Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. 16, 16 (2015).

<sup>129</sup> Bruce Ackerman, *The Living Constitution*, 120 HARV. L. REV. 1737, 1754-55 (2007) ("For me, the 'living Constitution' is not a convenient slogan for transforming our very imperfect Constitution into something better than it is. While the effort to make the Constitution into something truly wonderful is an ever-present temptation, the problem with this high-sounding aspiration is obvious: there are lots of competing visions of liberal democratic constitutionalism, and the Constitution shouldn't be hijacked by any one of them. The aim of interpretation is to understand the constitutional commitments that have actually been made by the American people in history, not the commitments that one or another philosopher thinks they should have made. On this key point, I am closer to Justice Scalia than to Professor Ronald Dworkin. I part company when Scalia joins Alfarabi in assuming that the formal text contains the *complete* constitutional canon, thereby cutting himself off from the last seventy-five years of constitutional achievement.")

The idea of a three-part soul may be intended to understand the basic functions of an aspect of government, each member has an entire soul (*ψυχή*) governing their aspects of existence. This leads to more nuanced decisions, not only in the judiciary, but in all three branches of the government.

In terms of the judiciary, stepping outside of the bounds of the separate powers or the role in the soul of the polity can have good and bad outcomes. Justice from the charioteer comes from consistency, as many philosophers have defined justice. In this case, the *logos* is seen through the Supreme Court and judiciary, applying and interpreting the law.

### B. Executive as *Thumos*

In this paper the executive<sup>130</sup> represents *thumos*. *Thumos* represents the spirit of the soul, as represented by the white horse in the *Phaedrus*.<sup>131</sup> The white horse is spirited but controlled with a sense of potential shame.<sup>132</sup>

#### 1. Explaining Why the Executive is Not *Logos*

However, in Professor Covitz's formulation, the executive represents *logos*. As mentioned previously, Socrates states in the *Republic* that a person "watering and fostering the growth of the rational principle [*logos*] in his soul and the others the appetitive and the passionate [two representing *eros*]," and this person "is not by nature of a bad disposition but has fallen into evil communications," meaning this person has not become evil, but just in between the pull of *logos* and the pull of *eros*, but is otherwise unable to make a decision.<sup>133</sup> Socrates says this tension will resolve in "a compromise and turns over the government in his soul to the intermediate principle of ambition and high spirit and becomes a man haughty of soul and covetous of honor [meaning a turn to the *thymotic* part of the soul]"<sup>134</sup>

This indicates that one will likely turn to politics while in the tension of *logos* and *eros*, and, in other words, has become *thymotic*. This is more akin to the President—rather than a member of the judiciary—who, in all likelihood, is in search of honors much like other politicians. This is not a negative aspect of the executive, necessarily, because if the executive of the country did not seek honor or maintain some "haughtiness," other politicians and world leaders would take advantage of us. She must be a decisive president, not merely logical. Yet logic—as well as *eros*—may and must exist within her, but she must, as President, have a prevailing *thymotic* element.

#### 2. Cases and Examples Showing Why the Executive Represents *Thumos*

Here, the *thumos* manifests itself where a part of the Executive branch of government—such as the EPA—would interpret a statute from the legislature and implement it. This occurs through the rules laid out by the Supreme Court and the judiciary as seen in the *Chevron* case.

<sup>130</sup> It gains its source of power from U.S. CONST. art. II, § 1, cl. 1.

<sup>131</sup> PLATO, PHAEDRUS 248d–e. (Christopher J. Rowe trans., 1986).

<sup>132</sup> *Id.* at 247e–248e.

<sup>133</sup> PLATO, REPUBLIC, *supra* note 2, at 550b.

<sup>134</sup> PLATO, REPUBLIC, *supra* note 2, at 550b.

From 2013 through 2015, the Obama administration issued executive orders relating to immigration.<sup>135</sup> By November of 2015, the Fifth Circuit Court of Appeals declared the executive orders unconstitutional.<sup>136</sup> Regardless of whether the executive orders are eventually upheld as constitutional or not, they represent the Executive branch of government conducting actions with the administration's justification that they are the most "thymotic" solution to the immigration problem. If the orders are upheld to be constitutional after all, then the judiciary or the legislature will deem them to have been the most effective approach at the time to avoid a greater disaster later. If the orders are struck down as unconstitutional, then the judiciary or the legislature will have deemed them to be an ineffective approach at the time. In an ironic sense, the immigration orders—if deemed constitutional—will be seen as a way to unify the country in a spirited "thymotic" way to avoid a greater catastrophe.<sup>137</sup>

Because the executive and the legislature are charged with carrying out the daily activities of the nation, international relations appears to be of paramount importance with spirited leadership. Thus, the leadership and executive actions may or may not be based in *logos* and *eros* but through a combination of the two as is the Platonic paradigm for *thumos*, which this paper argues fits into the paradigm of the executive branch of government in the US Constitution.

### C. The Legislature as Eros

In this paper, the legislature<sup>138</sup> represents *eros*. *Eros* represents the basic instincts and desires of the soul as represented by the black horse in the *Phaedrus*. The black horse can wear down the white horse and charioteer.

The Patient Protection and Affordable Care Act<sup>139</sup> (Obamacare) was passed by Congress and signed into law in 2010.<sup>140</sup> According to the Supreme Court, "the Act aims to increase the number of Americans covered by health insurance and decrease the cost of health care. The Act's 10 titles stretch over 900 pages and contain hundreds of provisions."<sup>141</sup>

This example shows how the concept of justice is inconsistent. At the time it may be clear what the *eros*, the legislature, sees as justice. Over time, this may become unclear.

<sup>135</sup> NATIONAL ARCHIVES, *Barack Obama Executive Orders Disposition Tables*, <https://www.archives.gov/federal-register/executive-orders/obama.html>.

<sup>136</sup> Matt Ford, *A Ruling Against the Obama Administration on Immigration*, THE ATLANTIC (Nov. 10, 2015), <http://www.theatlantic.com/politics/archive/2015/11/fifth-circuit-obama-immigration/415077/>; Michael D. Shear, *Obama to Appeal Immigration Ruling to the Supreme Court*, THE NEW YORK TIMES (Nov. 10, 2015), <http://www.nytimes.com/2015/11/11/us/politics/supreme-court-immigration-obama.html>.

<sup>137</sup> "Catastrophe" used here in the Ancient Greek sense of "cata" and "strophe," meaning under turned or overturning. Oxford English Dictionary (2d ed. 1989) ("Etymology: < Greek *καταστροφή* overturning, sudden turn, conclusion, <*κατα-στρέφειν* to overturn, etc., <*κατά* down + *στρέφειν* to turn.").

<sup>138</sup> Its power generally emanates from U.S. CONST. art. 1 §1.

<sup>139</sup> Patient Protection and Affordable Care Act, 42 U.S.C. §18001 (2010).

<sup>140</sup> Sheryl Stolberg & Ronald Pear, *Obama Signs Health Care Overhaul Bill, With a Flourish*, THE NEW YORK TIMES (Mar. 23, 2010),

<http://www.nytimes.com/2010/03/24/health/policy/24health.html>.

<sup>141</sup> Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2580 (2012).



## CONCLUSION

To reiterate, this paper demonstrates that interpretation of the problems and the eventual purpose of the United States government, while simultaneously explaining its continued existence, requires analysis of the three-part structure of the United States federal government as outlined in the Constitution, and subsequently interpreted by all three parts of the government through the lens of the Platonic paradigm of *logos*, *thumos*, and *eros* as explained in Plato's dialogues. The major premise of the paper is Plato's three-part soul. The minor premise is the three-part structure of the United States government. The syllogism is the analysis which shows how each part of the Platonic soul represents itself in three parts: judiciary for *logos*, executive for *thumos*, and legislature for *eros*.

Overall, this Platonic analysis of the Constitution's structure and function could add to the dialogue of constitutional analysis. Indeed, there are arguments for originalist, textualist, and evolving constitutional doctrine, but there seems to be a basis for a Platonic interpretation of the Constitution.

In line with a balanced soul of the polity and a balanced government, it would seem that each part of government would not reach into another's duties.<sup>142</sup> As fate would have it, each person in the Platonic paradigm has the three parts of the Platonic soul. Although an individual may act in one part of the federal government, each person has all three parts. Thus, it is to be expected that different parts of the soul would manifest in a different part of the federal government.

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<sup>142</sup> James Madison, *The Federalist No. 47*, at 301 (Clinton Rossiter ed., 1961).