

**Constructing Means and Ends in Defining Obamacare:
Contrasting Supreme Court Constructions
of Congressional Motives in
National Federation of Independent Business v. Sebelius
and *King v. Burwell***

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To the surprise of many commentators, the conservative-leaning U.S. Supreme Court came to the rescue of the Patient Protection and Affordable Care Act (also known as Obamacare) twice, defending the individual mandate and subsidies for Americans using federally-run state insurance exchanges. They did so by constructing congressional motives as supporting favorable interpretations of the law using ends-means arguments. However, the two cases drew upon different grammatical resources, either defining means to suit the ends, or defining ends to suit the means. This paper adds to previous work that demonstrates the centrality of motive construction to judicial rhetoric and shows in particular how opinion writers may draw upon different motivational elements to define the meaning of laws. In particular, it explains how Chief Justice Roberts approached these two defenses of Obamacare differently. It concludes by considering how these constructions shaped interpretations of the High Court's motives.

To the surprise of many commentators, the conservative-leaning U.S. Supreme Court came to the rescue of the Patient Protection and Affordable Care Act (hereinafter ACA) twice, defending the requirement that most individuals must buy health care insurance or incur a penalty (*National Federation of Independent Business v. Sebelius*¹) and supporting federal subsidies for poorer Americans buying insurance through federally-run state insurance exchanges (*King v. Burwell*²). Chief Justice Roberts, who authored both decisions, was the key swing vote in the first case, defecting from the Court's conservative bloc to support the health care reform law, with Justice Kennedy joining him in the later decision supporting subsidies and yielding a 6-3 ruling that left Justices Scalia, Thomas, and Alito dissenting.

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Both cases involved interpretations of the ACA, of congressional motives in passing it, and of their structuring it as they did. That is, both cases grapple with the statute as a *legislative act*, a full-blooded product of human action. In particular, they sought to understand the ends or purposes of the Act, and the means as embodied in statutory language and provisions of the Act. Means and ends are logically related in such pragmatic action, allowing the Chief Justice to work from both ends of that relationship in teasing out congressional motives.³ Interestingly, in these the two cases Roberts draws upon two different poles of the means-end relationship, either defining means to provide an understanding of ends or, alternatively, of defining ends to explain congressional means.

The paper adds to previous work that assesses the role of motive construction in judicial rhetoric⁴ and shows in particular how opinion writers may draw upon different elements of action to define the meaning of laws. In particular, it explains how Chief Justice Roberts approached these two defenses of the ACA differently. It concludes by considering how such constructions shape, in turn, our understanding of Supreme Court argument.

National Federation of Independent Business v. Sebelius

As Roberts' opinion notes, the day President Obama signed the ACA, thirteen states filed a complaint in the District Court for the Northern District of Florida challenging the law. A dozen more states later joined the suit. The District Court struck down the entire law because of the law's requirement that individuals purchase health care insurance, insisting that this mandate was beyond the powers of Congress. Furthermore, the court determined that this provision could not be severed from the act as a whole; thus, the entire act had to fall (8). The 11th Circuit Court of Appeals agreed the individual mandate exceeded congressional authority but rejected the District Court's contention that the mandate could not be severed from the Act (8-9). The 11th

Circuit upheld the law's requirement that states expand Medicaid to include many more poor people or suffer the loss of all their Medicaid funding (11).

In a different appeal the 4th Circuit determined that it had no jurisdiction to hear the case because the individual mandate was a tax and the Anti-Injunction Act, which was passed to prevent taxpayers from delaying the payment of taxes by challenging them in court, prevented courts from hearing such tax cases. In a third appellate case, the 6th Circuit Court of Appeals upheld the law as a valid exercise of congressional power under the Commerce Clause, which allows Congress to regulate interstate commerce (in this case, commerce in health insurance) (9). With a split among the circuits, and given the national importance of the issue, the Supreme Court heard the case on appeal.

Chief Justice Roberts's majority opinion rejected the ACA's requirement that states accept an expansion of Medicaid to include more poor people or else lose *all* their Medicaid funding. He called that provision "a gun to the head" (51) that "leaves the States with no real option but to acquiesce in the Medicaid expansion" (52). He was more supportive of the Government's argument on the individual mandate. I will focus on this argument that took up the majority of the opinion, particularly as it rejected the argument of his dissenting conservative colleagues.

Roberts initially appeared ready to invalidate the law because of the individual mandate. He spent the first half of his opinion claiming that the individual mandate could not be justified through Congress's power to regulate commerce. In a lengthy argument, he concluded that "[t]he individual mandate...does not regulate existing commercial activity. It instead compels individuals to become active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce" (20). He warned of a slippery slope in allowing *inactivity* to be counted as commerce, urging:

Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing [i.e., not buying health insurance] would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply fail to do it. Allowing Congress to justify federal regulation by pointing to the effect

of inaction on commerce would bring countless decisions an individual could potentially make within the scope of federal regulation, and—under the Government’s theory—empower Congress to make those decisions for him. (20-21)

He rides this slope to the bottom, suggesting that, given the nation’s obesity problem, the government could force everyone to buy broccoli to improve their health and help the health care system under the guise of regulating commerce (27).⁵

It is unsurprising that he rejected the Commerce Clause to support congressional authority here. Conservatives as far back as Chief Justice Taney have gone to great lengths to avoid expanding federal power through that clause.⁶ The Warren Court, on the other hand, relied on the Commerce Clause to support many Civil Rights era laws, such as those prohibiting racial discrimination in public accommodations.⁷ However, in the past couple of decades, the Rehnquist Court, for the first time since the early 1930s, began to restrict the Commerce Clause power, striking down the Violence Against Women Act and an act to prohibit the carrying of guns on school grounds.⁸

Roberts briefly considered whether this legislation might be supported under the Necessary and Proper Clause of the Constitution, but quickly rejected that, urging:

Each of our prior cases upholding laws under that Clause involved exercises of authority derivative of, and in service to, a granted power. ...The individual mandate, by contrast, vests Congress with the extraordinary ability to create the necessary predicate to the exercise of an enumerated power. (29)

While coining money is an enumerated power, regulating health care insurance is not.

The second half of Roberts’s opinion yielded support for the ACA’s individual mandate. Here is where his constitutional ruling required considerable statutory interpretation and he invoked means-ends logic to reach his favorable ruling. Roberts admitted that “[t]he most straightforward reading of the mandate is that it commands individuals to purchase insurance” (31). But, the means by which Congress enforced that mandate, he urges, makes the provision appear more like a tax. For example, Congress does not use a means that operates as long as its mandate is not met, such as placing a

lien on one's property, suspending other rights or privileges, imprisonment, or other harsh measures. Instead, he emphasized,

if an individual does not maintain health insurance, the *only* consequence is that he must make an additional payment to the IRS when he pays his taxes. See §5000A(b). That, according to the Government, means the mandate can be regarded as establishing a condition—not owning health insurance—that triggers a tax—the required payment to the IRS. Under that theory, the mandate is not a legal command to buy insurance. Rather, it makes going without insurance just another thing the Government taxes, like buying gasoline or earning income. (32; emphasis added)

Thus, the means of enforcement supports the purpose as taxing the noncompliant, rather than applying significant pressure to force them to buy insurance.

Features of that means led Roberts to construe it as a tax rather than a penalty. For example, rather than making the cost of noncompliance draconian, Roberts noted that “for most Americans the amount due will be far less than the price of insurance, and, by statute, it can never be more” (35); thus, “[i]t may often be a reasonable financial decision to make the payment rather than purchase insurance,” as distinguished from more “‘prohibitory’ financial punishment[s]” used for other purposes (35-36). Furthermore, unlike other mandates, he notes that this one “contains no scienter requirement”; that is, regardless of the state of mind of a person who fails to purchase health insurance—*purposefully* defying the mandate; *knowingly* ignoring the requirement—one is held strictly liable, which is common for a tax, but less common for a penalty (36). Finally, by using the IRS to collect the payment, Congress was using a standard means for collecting taxes, while “the [Internal Revenue] Service is not allowed to use those means most suggestive of a punitive sanction, such as criminal prosecution. See §5000A(g)(2)” (36). Thus *how* the statute enforced the individual mandate made it look more like a tax.

Other aspects of the Act also made this exaction look “like a tax in many respects.” For example, the statute requires that the “[s]hared responsibility payment,” be paid into the Treasury by

“taxpayer[s]” when they file their tax returns. 26 U. S. C. §5000A(b). It does not apply to individuals who do not pay federal income taxes because their household income is less than the filing threshold in the Internal Revenue Code. §5000A(e)(2). For taxpayers who do owe the payment, its amount is determined by such familiar factors as taxable income, number of dependents, and joint filing status. §§5000A(b)(3), (c)(2), (c)(4). The requirement to pay is found in the Internal Revenue Code and enforced by the IRS, which—as we previously explained—must assess and collect it “in the same manner as taxes.” (32)

Roberts reinforces his payment-as-tax construction by drawing on another means deployed here: The IRS is the collection agency.

Ends or purpose played a smaller role in this interpretation. Taxes normally are meant to raise revenue. As Roberts notes, the mandate “produces at least some revenue for the Government.... Indeed, the payment is expected to raise about \$4 billion per year by 2017” (32). And even if this collection of taxes is primarily meant to motivate behavior, so are other taxes, Roberts notes, such as cigarette taxes, which seek “to encourage people to quit smoking” (36).

Roberts’ friendly reading was bolstered by his insistence that the Court be highly deferential to Congress.

The question is not whether that is the most natural interpretation of the mandate [i.e., as a tax], but only whether it is a “fairly possible” one. *Crowell v. Benson*, 285 U. S. 22, 62 (1932). As we have explained, “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Hooper v. California*, 155 U. S. 648, 657 (1895). The Government asks us to interpret the mandate as imposing a tax, if it would otherwise violate the Constitution. Granting the Act the full measure of deference owed to federal statutes, it can be so read.... (32)

So, the wiggle room Roberts had for deferring to Congress was his ability to capitalize on the means by which Congress supported the mandate to suggest that taxing was the central purpose here, insofar as constitutional authority is concerned. His emphasis in defending the ACA in *King v. Burwell* would be the opposite, looking to ends or purpose of the statute to explain the means.

King v. Burwell

King v. Burwell also involved conflicting decisions from lower courts that needed resolution by the High Court. But, rather than a constitutional case with statutory issues, this case was a straightforward instance of statutory construction. The problem turned on a single troublesome phrase, which requires some background on the ACA to explain.

The ACA requires states to create exchanges where their citizens can shop for competitive insurance plans online (5). However, if a state fails to create an exchange for its citizens, the federal government will step in and create an exchange for them. By 2015, thirty-four states had failed to create exchanges, so that a large majority of Americans were relying on federally created exchanges (6). The ACA also provides tax credits for people whose incomes are so small that purchasing health insurance would take more than 8% of their annual income (4). Here is where the statutory problem arises, as Roberts notes: “The Act then provides that the amount of the tax credit depends in part on whether the taxpayer has enrolled in an insurance plan through ‘an Exchange *established by the State* under section 1311 of the Patient Protection and Affordable Care Act...” (5; emphasis added by Roberts). The plaintiffs in the case argued that because of this provision, *only* individuals who purchase health insurance through exchanges established by a state are eligible for federal tax subsidies.

To overcome this rather plain language, Roberts’s opinion had to go beyond that statutory language and attribute an overall purpose to the Act that rendered a plain reading of this provision “ambiguous” (12), or perhaps “inartful[ly] draft[ed]” (14), requiring judicial clarification. That is, he sought to adjust our understanding of the statutory means to better fit the act’s overall purpose. Doing so led Justice Scalia, in dissent, to complain that the majority relied too heavily on “the Affordable Care Act’s design and purposes” (12), ignoring the plain words of this provision (its linguistic means), so that “[w]ords no longer have meaning [because] an Exchange that is *not* established by a state is ‘established by the state’” (2). In his colorful fashion, he objects that the majority was engaging in “interpretive jiggery-pokery” (8).

The early part of the opinion appears means-driven, following in typical statutory-construction fashion the language of other sections of the statute that would be made problematic by the plaintiff's reading. That is, he tries to read these various provisions-as-means together so they mesh well like gears serving the same (mechanical) purpose. For example, he notes:

After telling each State to establish an Exchange, Section 18031 provides that *all Exchanges* "shall make available qualified health plans to qualified individuals." 42 U. S. C. §18031(d)(2)(A). Section 18032 then defines the term "qualified individual" in part as an individual who "resides in the State that established the Exchange." §18032(f)(1)(A). And that's a problem: If we give the phrase "the State that established the Exchange" its most natural meaning, there would be no "qualified individuals" on Federal Exchanges. But the Act *clearly contemplates* that there will be qualified individuals on every Exchange. (10; emphasis added)

Personifying the Act here follows a long judicial tradition; it provides a way of attributing *intent* and *purpose* to the product of a deliberative body (i.e., legislation), rather than simply to that body itself.⁹ In short, it brings purpose front and center as a way to understand means (in this case, statutory words as means).

Technically, the insistence on looking at other parts of the Act invokes *context* as a source of purpose, though a *context of words* rather than a literal *legislative context* (e.g., the situation within which the legislation was passed). Thus, what Congress said in various provisions of the Act offers a textual context illuminating what they meant in one provision, as does a consideration of the problems they were addressing as they passed the Act (i.e., the *legislative context*). So, for example, in a text-as-context example, he says:

But oftentimes the "meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." *Brown & Williamson*, 529 U. S., at 132. So when deciding whether the language is plain, we must read the words "in their context and with a view to their place in the overall statutory scheme." *Id.*, at 133 (internal quotation marks omitted). Our duty, after all, is "to construe statutes, not isolated provisions." *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 559 U. S. 280, 290 (2010) (internal quotation marks omitted). (9)

By looking not at isolated means, but multiple means as part of an overall statutory scheme, various provisions imply an overall statutory purpose which, in turn, can be applied to an understanding of one of those provisions.

Roberts invokes the other sense of context, the context of the legislation, in noting:

The Patient Protection and Affordable Care Act, 124 Stat. 119, grew out of a long history of failed health insurance reform. In the 1990s, several States began experimenting with ways to expand people's access to coverage. One common approach was to impose a pair of insurance market regulations—a "guaranteed issue" requirement, which barred insurers from denying coverage to any person because of his health, and a "community rating" requirement, which barred insurers from charging a person higher premiums for the same reason. Together, those requirements were designed to ensure that anyone who wanted to buy health insurance could do so. (2)

He notes that these schemes failed by running up insurance rates and driving insurance companies out of states because it led people to wait until they were sick to buy insurance (knowing they could not be turned down) and left the pool of insured with a sicker, more costly population. Not until the Massachusetts model, ironically passed under Governor Mitt Romney (who ran against the ACA in his 2012 presidential election bid) did a state succeed by including an individual mandate that required everyone in the state to have health insurance, helping those too poor to buy it with state subsidies. Roberts noted that "[t]he combination of these three reforms—insurance market regulations, a coverage mandate, and tax credits—reduced the uninsured rate in Massachusetts to 2.6 percent, by far the lowest in the Nation" (3).

This review of the historical context of the ACA offers a story of experiment, failure, and eventual success to suggest that Congress was influenced to adopt this "three-reforms" approach, since using less than all three would result in "an economic 'death spiral'" for the plan (2). We learn from that history that creating a workable health insurance system that provides near-universal coverage—the goal of the statute—requires this approach.

Elsewhere, Roberts's invocation of statutory purpose is more direct. For example, he states:

Here, the statutory scheme compels us to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a Federal Exchange, and likely create the very "death spirals" that Congress *designed the Act to avoid*. See *New York State Dept. of Social Servs. v. Dublino*, 413 U. S. 405, 419–420 (1973) ("We cannot interpret federal statutes to negate their own stated *purposes*."). (15; emphasis added)

He invoked Congressional intent in another place, insisting that "[i]t is implausible that Congress meant the Act to operate in this manner [that would throw the program into a death spiral]" (17). He supported this last point by quoting the dissent from the previous case, *National Federation of Independent Business v. Sebelius* (which included all three dissenters from the present case, plus Justice Kennedy), who invoked purpose for their conclusion in that case in stating, "Without the federal subsidies...the exchanges would not operate as Congress intended and may not operate at all" (qtd. at 17). Statutory means were often close by when Roberts invoked purpose. For example, he insists, "those requirements only work when combined with the coverage requirement and the tax credits. So it stands to reason that Congress meant for those provisions to apply in every State as well" (18).

Roberts ended by admitting that "Petitioners' arguments about the plain meaning of Section 36B are strong" (20). However, he warned against reading that section in isolation, and concluded "the context and structure of the Act compel us to depart from what would otherwise be the most natural reading of the pertinent statutory phrase" (20).

Conclusion

This paper illustrates two general sources for judicial invention in statutory interpretation, working from opposite sides of the ends-means relationship. The same justice, in this case the Chief Justice, drew upon means to define a problematic purpose,

and upon purpose to explain a problematic means. Three things are noteworthy about this inventional strategy. First, motive constructions of the type I illustrate here are opportunistic in drawing upon one or the other pole of this ends-means relationship. Roberts just as easily could have strictly interpreted language as equaling statutory means and yielding statutory ends in *King v. Burwell*, as he did in the first case. Scalia's dissent did this and suggested, alternatively to Roberts, that allowing the three-reforms approach to be undermined (in a strict reading of this provision) might have revealed Congress's true purpose: getting states to create exchanges. He complains that Roberts's reading "frustrates the goal of encouraging state involvement in the implementation of the Act" (16). So, reading the "Exchange *established by the State*" provision strictly could yield a different purpose than that offered by Roberts (through a means-end relationship): getting states involved even at the cost (and through the threat of) failure in obtaining a sustainable health insurance market.

As a general matter, neither interpretations that start with purposes, nor those that start with means, are more justified as *legal* interpretations. Both approaches attempt to discern the meaning of a statute, and it is *the finding of the most credible interpretation of that meaning* that provides legal justification in a given case. Not even activist judges want their opinions to appear to stray from what the constitutionally-empowered lawmakers who passed a statute were trying to do. Even those who eschew a search for legislative intent—such as those who would stick to statutory words alone and ignore the context that produced a given statute—ultimately are trading on what the "law laid down" is *meant* to do.

The reason judges of all philosophical stripes find themselves sometimes looking to a statute's means, and sometimes to its ends, is that laws are legal *enactments*—that is, *human acts*. And, as Kenneth Burke has shown about action generally, and as I have shown about legal enactments here and elsewhere,¹⁰ human acts are inherently complex and subject to alternative interpretations (and, therefore, alternative arguments for those interpretations). If we recognize the richness of statutes—as well as regulations

and constitutions—as deriving from their status as human acts, we will better understand the rhetoric of law.

Second, given the ambiguity of motives we find in legislation, and the logical connections we find in their ends and means, we should be sensitive to the indirectness we often find in judicial constructions of legislative motives.¹¹ So, for example, when searching for the purposes of a statute, judges often might look to the means (the language and provisions) which it uses. Or to properly understand the language and provisions—the means—judges often turn to a consideration of purposes, taking those ends back to better understand the language and provisions of a statute. Other elements of action offer indirect interpretations of ends and means as well.¹²

This second point carries a third implication, this for rhetorical critics of law. We should begin our work by identifying the problematic elements in a given construction of a statute, regulation, or constitutional provision. In *Sebelius*, the problematic element was its purpose—was it supposed to mandate the buying of insurance or tax the condition of going without health insurance? Rhetorical work by judges to shore up that element—in this case, the purpose of the statute—should receive our closest attention. In this case, we followed Roberts’ discourse into an analysis of means, which was his indirect route to defining the ends of the statute.

As I have shown elsewhere, such indirectness often leads outside the act in question to other acts that shape the interpretation of problematic elements that are central to a decision. In the *Sebelius* case, for example, one such act was a judicial act: the proper stance of the Court towards Congress. Roberts insisted that the Constitution and prior cases required considerable deference to congressional intentions. That justified Roberts’s willingness to bend over backwards to find the ACA constitutional by seeing a *tax* where a *mandate to buy* health insurance might have been the more “natural” reading. The dissenters, by contrast, constructed their role as more stringent legal analysts who were required to hew to the specific statutory language, letting the constitutional chips fall where they may.

Whatever Chief Justice Roberts's motives in siding with the liberal bloc twice—and some have suggested he was concerned about the High Court's reputation in the wake of the controversial decisions in *Bush v. Gore* and *Citizens United v. Federal Election Commission*¹³—he defied the wishes of his conservative colleagues and saved the ACA from the judicial ax. And he accomplished it by playing both sides of the ends-means relationship.

Unfortunately for supporters of the Affordable Care Act, the Tax Cuts and Jobs Act passed by the Republican Congress and signed by President Trump in December 2017 ends the requirement that individuals purchase health insurance or pay a tax. Because this was one of the “three reforms” required for a successful universal health care policy (along with a “guarantee issue” requirement and a “community rating” requirement), this move may lead to the demise of this law which garnered so much attention from the High Court.

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Endnotes

1. *National Federation of Independent Business v. Sebelius*, 567 U.S. (2012). Further references to slip opinions in this case will be made in the text.

2. *King v. Burwell*, 576 U.S. (2015). Further references to slip opinions in this case will be made in the text.

3. Kenneth Burke explains how means and ends are related in *A Grammar of Motives* [1945] (Berkeley: University of California Press, 1969). See especially Chapter IV on Agency and Purpose. For an explanation of Burke's conception of *motive* see Clarke Rountree, “Coming to Terms with Kenneth Burke's Pentad,” *American Communication Journal* 1, no. 3 (May 1998): n.p. Those familiar

with my work and with Burke's *Grammar* will see this analysis as drawing upon his dramatic framework. However, the limitation of my consideration here to means and ends (Burke's *agency* and *purpose*) do not require that I deploy his dramatic terminology, though I will offer particular references to Burke's theory explaining why these means-ends relations are so commonly invoked as appropriate.

4. See especially Clarke Rountree, "Instantiating 'The Law' and Its Dissents in *Korematsu v. United States*: A Dramatic Analysis of Judicial Discourse," *Quarterly Journal of Speech* 87 (February 2001): 1-24 and Clarke Rountree, *Judging the Supreme Court: Constructions of Motives in Bush v. Gore*, Rhetoric & Public Affairs (East Lansing, MI: Michigan State University Press, 2007).

5. Perhaps this is not the bottom. The joint dissent of Justices Scalia, Thomas, Kennedy, and Alito claims that the government could regulate *breathing*: "To go beyond that, and to say the failure to grow wheat (which is not an economic activity, or any activity at all) nonetheless affects commerce and therefore can be federally regulated, is to make mere breathing in and out the basis for federal prescription and to extend federal power to virtually all human activity" (dissenting opinion, 3).

6. Taney wrote an opinion in 1851 supporting giving the Supreme Court jurisdiction over admiralty cases that go beyond the traditional bounds of cases that arise on the seas or "within the ebb and flow of the tide." Overturning a 26-year old precedent, he rejected the Commerce Clause in favor of a creative revision of four hundred years of common law by converting the "ebb and flow" role into "navigable water," that would include the Mississippi River, the Great Lakes, and other inland waters. *The Genesee Chief*, 53 U.S. (12 How.) 443 (1851). I analyze the case in "Reversing Course: Supreme Court Overruling in an Early Admiralty Case," Paper presented to the National Convention of the National Communication Association, Orlando, FL, November 2012.

7. For example, *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241 (1964).

8. Justice Ginsburg reviews these cases in her dissent at p. 28.

9. Statutory interpretation grapples with this issue as beyond simply what Congress intended, but what Congress *through its statute* intended. While the justices sometimes look at preambles, committee reports, and floor debates for intent, they cannot go back and recreate what was in the heads of a group that makes a collective decision, given the complex factors that shape legislation. For a discussion of this see, for example, Ronald Dworkin's consideration of the Supreme Court's interpretation of Florida legislation in *Bush v. Gore* in Ronald Dworkin, *A Badly Flawed Election: Bush v. Gore, the Supreme Court and American Democracy* (New York: New Press, 2002), 19.

10 See note 4.

11. Burke calls this the "paradox of substance." See *A Grammar of Motives*, 21–23.

12 This is where Burke's pentad illuminates our understanding of "indirect" judicial rhetoric. For example, scene, or situation, can be said to "contain" a legislative act—as when a crime wave leads legislators to pass a crime bill. Or a conservative legislature (certain kinds of agents) can be said to pass a law for conservative purposes.

13. See, for example, Ariane de Vogue, "4 things we learned about John Roberts," CNN.com, 25 June 2015. It is beyond the purpose of this paper to explain Chief Justice Roberts' motives for his support of the ACA in this case. I offer this example as one explanation to provoke thought about his departure from his conservative brethren, not to resolve it. My interest here is to explain how judges justify their interpretations of statutes