RECASTING CANONS OF CONSTRUCTION INTO "CANONICAL" QUERIES: INITIAL CANONICAL QUERIES OF PRESENTED OR TRANSMITTED TEXT

Harold Anthony Lloyd

RECASTING CANONS OF INTERPRETATION AND CONSTRUCTION INTO "CANONICAL" QUERIES: INITIAL CANONICAL QUERIES OF PRESENTED OR TRANSMITTED TEXT

Harold Anthony Lloyd[*]

This Article advocates recasting the canons of construction into neutral queries rather than presumptions or directives of meaning. Such an approach would not only rectify problems with the canons discussed in this Article, but it would also provide lawyers with highly useful "checklists" of semantic questions lawyers might otherwise overlook when interpreting and construing meaning in contexts of both private law (e.g., contracts) and public law (e.g., constitutional provisions and statutes).

As part of such advocacy, this Article explores in detail the following "canonical" queries and sub-queries (and the canons of construction they replace where applicable): the applicable text query, the plain meaning query, the ambiguity sub-query, the vagueness sub-query, the indeterminacy sub-query, the ordinary meaning query, the technical and term of art query, the grammar query, the punctuation query, the further meaning query, and the irony/non-literal meaning query. This Article also includes a detailed Appendix outlining further needed queries to be addressed in future articles. These include the ejusdem generis query, the noscitur a sociis query, the expressio unius query, the antecedent/subsequent query (rejecting the rule of the last antecedent), the anaphora query, the whole text query, the surplusage query, the absurdity query, the exercise of power query (rejecting general construction against the drafter), and queries of meaning through time.

---

* Professor of Law, Wake Forest University School of Law. I gratefully thank my excellent research assistants, Blake Davis, Ty Jameson, Laura Jordan, and Blake Witty, for their persistent hard work on, and invaluable assistance with, this Article (including without limitation Mr. Davis's very useful contributions to the Introduction). Any errors or other shortcomings are of course my own.

Additionally, to help direct proper application of the queries, this Article explores the distinction between interpretation and construction.

TABLE OF CONTENTS

INTRODUCTION

Throughout American legal history, judges, scholars, and practitioners alike have placed a heavy (perhaps, too heavy) emphasis on the canons of construction. This may reflect a view of the law as inherently formalistic, a view no doubt currently due at least in part to the overemphasis of the casebook method and Langdellian methodologies in the law school classroom and beyond.[1] As legal realism has gained traction as a jurisprudence over the past century, the canons have retained their place of prominence, though not without their notable detractors, like Karl Lewellyn, who famously (or, infamously, depending on one's view) argued that the canons occupy an inordinate role in statutory interpretation.[2] To this day, as noted below in this Article, divergent jurisprudential views of the canons exist in the profession with formalist and realist approaches disputing their utility and determinative potency.

This Article is the first in a series intended to chart a middle, pragmatic path forward for judges, scholars, and practitioners alike.[3] It maintains that the canons possess value for interpretation, but they should not be limited to any formalistic, rigid point of origin. Rather, the Article proposes that the canons should be recast as queries of meaning where possible.

In charting such a middle path, this Article avoids the conflict, crossfire, confusion, and even misfire that frequently besiege the canons. Taking such a middle path also allows this Article to propose use of such queries in both public and private law contexts to the extent applicable.[4]

---

1. *See generally* Harold A. Lloyd, *Exercising Common Sense, Exorcising Langdell: The Inseparability of Legal Theory, Practice, and the Humanities*, 49 WAKE FOREST L. REV. 1213 (2014).

2. *See generally* Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395 (1950) (articulating this view).

3. As explained in Parts II, III, & IV, this recasting of the canons will refine their process, utility, and mettle as queries of meaning.

4. Justice Scalia and Professor Bryan Garner also note that the first thirty-seven sections of their volume "deal with principles for interpreting all types of legal instruments, from constitutions to statutes to ordinances to regulations to contracts to wills." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 51 (2012).

Part I of this Article provides background on the canons and explains the issues along with predominate views on them today. Part II explains the methodology for recasting the canons, and Part III addresses the importance of acknowledging the distinction between interpretation and construction in the recasting. Part IV details the taxonomical classification system for the canons as queries based on seven distinct "types" and many different "groups" of indicia for meaning and communication. Part V then begins to detail the canons included in the Groups One, Two, and Three of the First Type. Future articles in this series will build upon the work in this Article, by applying its methodology to the full taxonomy of the canons once they are recast into canonical queries.

I. GENERAL BACKGROUND

A. Dueling Claims

There is fundamental disagreement as to the nature and effect of the canons of construction. In the statutory context, for example, some scholars view the canons as "strong rules and presumptions that, if followed religiously, would ensure predictability, neutrality, objectivity, and transparency" when finding statutory meaning.[5] Others, like Justice Alito, believe that:

> To the extent that interpretive canons accurately describe how the English language is generally used, they are useful tools. But they are not inflexible rules. . . . Statutes are written in English prose, and interpretation is not a technical exercise to be carried out by mechanically applying a set of arcane rules. Canons of interpretation can help in figuring out the meaning of troublesome statutory language, but if they are treated like rigid rules, they can lead us astray. When [the Supreme Court] describes canons as rules or quotes canons while omitting their caveats and limitations, we only encourage the lower courts to relegate statutory interpretation to a series of if-then computations. No reasonable reader interprets texts that way.[6]

Still others claim that the canons are "completely unconstrain[ed]" and thus "unhelpful to the rule of law, unfaithful to democratic decision-making, and a hindrance to effective governance."[7] Thus, for example, Karl Llewellyn famously set out what he considered to be twenty-eight opposing canons from which

---

5. WILLIAM N. ESKRIDGE JR., A PRIMER ON HOW TO READ STATUTES AND THE CONSTITUTION 16 (2016).

6. Facebook, Inc. v. Duguid, 141 S. Ct. 1163, 1175 (2021) (Alito, J., concurring).

7. *See* ESKRIDGE, *supra* note 5, at 19.

courts and litigants could pick and choose.[8] Recasting the canons as queries should moot such dueling claims.

B. Self-Dueling Canons

Additionally, the canons duel with themselves. For example, one can contrast these two quite different formulations of the absurdity canon: "a provision in a legal instrument may be either disregarded or judicially corrected as an error ([especially] when the correction is textually simple) if failing to do so would result in a disposition that no reasonable person could approve"[9] and "where a literal interpretation of the language of a statute will lead to absurd results, or contravene the manifest purpose of the Legislature, as otherwise expressed, the reason and purpose of the law shall control and the strict letter thereof shall be disregarded."[10]

Due to page limitations, I cannot set out lengthy lists of multiple such self-dueling canons. Instead, I shall generally rely on the Eleventh Edition of *Black's Law Dictionary* for initial working definitions of the canons. I choose that source for two reasons. First, I choose it because of its currency and widespread usage. Second, I choose it because I often find it to include some of the most carefully thought-out expressions of the canons. As discussed in various Parts below, however, its definitions also raise objections. Of course, recasting the canons as queries should moot and thus temper such self-dueling.

C. Cross-Firing Canons

Even if one agrees on the formulations of the canons, they can conflict and fire in different directions. For example, as discussed in Subpart V.C.1, we can have an ordinary meaning canon that tells us to give words the meaning that would be assigned by proper usage and grammar. At the same time, we can also have an absurdity canon providing that "a provision in a legal instrument may be either disregarded or judicially corrected as an error . . . if failing to do so would result in a disposition that no reasonable person could approve."[11] These two canons can therefore crossfire and lead to alternate results. Thus, for example, Justice Scalia and Professor Bryan Garner acknowledge such crossfire when they note: "No canon of interpretation is absolute. Each may be overcome by the strength

---

8. *See* Karl N. Llewellyn, *supra* note 2, at 401–06. Other jurists and scholars have offered a response to Llewellyn. *See, e.g.*, SCALIA & GARNER, *supra* note 4, at 59 ("No canon of interpretation is absolute. Each may be overcome by the strength of differing principles that point in other directions.").

9. *Absurdity Doctrine*, BLACK'S LAW DICTIONARY (11th ed. 2019).

10. State v. Beck, 614 S.E.2d 274, 277 (N.C. 2005) (quoting Mazda Motors of Am., Inc. v. Sw. Motors, Inc., 250 S.E.2d 250, 253 (N.C. 1979)).

11. *Absurdity Doctrine*, *supra* note 9.

of differing principles that point in other directions."[12] But how do we sort such strength in practice? This Article maintains that we best address such crossfire by asking relevant "canonical" questions and that recasting the canons as queries will thus still the cross-firing canons.

D. Misfiring Canons

This leads us to a further and crucial point that context (along with other evidence) is critical for determining meaning. For example, without reference to the actual contexts involved, we cannot know whether "key" as used in a particular text means (1) an instrument for bolting or unbolting locks, (2) an instrument for winding clocks, (3) a solution to a riddle, (4) something found on a keyboard, (5) decoding instructions, (6) a tone,[13] or (7) perhaps something else entirely if the speaker intends some other meaning in the given context.

Because meaning can vary in the countless possible contexts in which terms can be used, canons which generally prescribe or presume meaning can thus project actual or presumed meaning that may be wrong in particular contexts. Furthermore, given that the meaning of "key," for example, can vary wildly by context even among the "ordinary" usages noted above, why would we presume one meaning over another? In fact, how do we choose which of these "ordinary" meanings to presume?

Of course, those who favor usage of the canons can reply that context should be considered and can even be expressly incorporated into the canons. For example, Justice Scalia and Professor Garner note that "[n]othing but conventions and contexts cause a symbol or sound to convey a particular idea,"[14] and the form of the term of art canon explored in Subpart V.C.2 below expressly incorporates context. If context ultimately controls, however, then what presumptive or directive canon can truly be left standing at the end of the day other than, perhaps, a highly abstract canon such as "meaning is determined by all the relevant evidence (including context)"?

Thus, where possible, this Article advocates recasting general canons of both interpretation *and* construction[15] as generally accepted model queries that allow lawyers to determine meaning in specific contexts and in light of other relevant internal and external evidence. Recasting the canons with queries should thus resolve the danger of misfiring canons.

---

12. *See* SCALIA & GARNER, *supra* note 4, at 59.

13. *See, e.g.*, *Key*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/key (last visited Mar. 23, 2022).

14. SCALIA & GARNER, *supra* note 4, at xxvii.

15. I distinguish between interpretation and construction in Part III below.

II. RECASTING CANONS AS MODEL QUERIES EXPRESSLY TIED TO CONTEXT AND OTHER RELEVANT INTRINSIC AND EXTRINSIC EVIDENCE

A. Canonical Queries and Common Questions of Meaning

Although the canonical queries[16] set out in this Article will examine common questions of interpreting and construing meaning, they will be expressly keyed to specific contexts and other relevant intrinsic and extrinsic evidence of meaning. For example, to contrast canonical queries with canons, one can turn to the *ejusdem generis* canon (discussed in Appendix A). One formulation of that canon provides that "when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."[17]

When considering the phrase "apples, pears, and other fruit," this formulation of the canon of *ejusdem generis* (if taken literally) would limit the scope of "other fruit" to fruit from trees (since apples and pears come from trees). Thus, strawberries would not fall under the phrase "other fruit." However, to make a sensible decision as to whether the speaker meant such a limitation to apply, one must *query* the actual context and other relevant evidence of meaning. If the parties, for example, expressly discussed and intended strawberries to be included as "other fruit," then such a query would demonstrate that the canon misfires in that case. The canonical query in such a case would prevent such misfire.

B. Canonical Queries and Checklists of Meaning

Since we can have other cases where a "general word or phrase" follows "a list of specifics," it is useful to have a model canonical query for such cases for at least two reasons. First, knowledge of such a query would remind us not to simply skip over similar cases without asking whether some limitation of the "general word or phrase" was intended by using the preceding "list of specifics." Second, having a model canonical query providing us specific, relevant questions to ask in this regard would increase the odds of a correct response. An *ejusdem generis* query on our interpretation and construction of meaning checklist would thus be useful.

Similarly, we can replace other canons exploring common questions of interpreting and construing meaning with model

16. I define such model queries expressly tied to context and other relevant internal and external evidence as "canonical queries" out of optimism that such queries will eventually help form a body of precise, thoughtful, and generally accepted related works of query scholarship. *See Canon*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/canon (last visited Mar. 23, 2022) (including among the definitions of the term "canon" an "accepted group or body of related works"). The "canon" root also of course reminds us of the progress of recasting the canons.

17. *Ejusdem Generis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

canonical queries tied to specific contexts and other relevant evidence. We can also explore common questions of interpreting and construing meaning that may not be covered by canons and devise model queries for such questions. Good lawyers use checklists to focus their work in other areas of the law. Why should determination of meaning (and documentation of meaning in drafting) be different?

The model canonical queries fully set out below in this Article and the types of further-needed model canonical queries outlined in Appendix A can thus help us begin the preparation of such a checklist.[18] In drafting such queries, this Article will consider them queries of both interpretation *and* construction, as such notions are distinguished in Part III below.

C. Caution in Facing the Canons

Although I now call for recasting the canons as queries expressly tied to context and other intrinsic and extrinsic evidence of meaning, I must stress that one cannot ignore the canons as long as they continue to fire. To the extent canons have been codified into law[19] or are otherwise used by courts in one's jurisdiction, one must of course engage them in the field. Such engagement not only involves litigators but those who draft documents and instruments as well. The latter must also be aware of the canons lest they unwarily draft in ways that provoke unintended consequences. Even when such warnings are duly noted, however, the long game should be to replace the canons with thoughtful canonical queries.

III. INTERPRETATION AND CONSTRUCTION: THE CANONICAL QUERIES AND THE SEARCH FOR LINGUISTIC AND LEGAL MEANING

The canonical queries proposed in this Article can be used for both interpretation *and* construction (a point that can be lost when canons are simply called "canons of construction"). Distinguishing the two concepts, interpretation "recognizes or discovers the linguistic

18. I thus go beyond William Eskridge, Philip Frickey, and Elizabeth Garrett who (to their credit) reflect upon the canons in an overview for students as "at least . . . a handy checklist of possibilities for advocates" who may, for example, have missed "that the words had an *ejusdem generis* formulation" as well as arguments "for narrow construction of broad catchall phrases upon which the canon is based." *See* WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY, & ELIZABETH GARRETT, LEGISLATION AND STATUTORY INTERPRETATION 383 (2d ed. 2006). In so demoting the canons, I thus agree with William Popkin that "canon" is "[a] label . . . which gives [an approach to interpretation] the appearance of more certainty than it deserves." WILLIAM D. POPKIN, A DICTIONARY OF STATUTORY INTERPRETATION 16 (2007). Furthermore, I would consider such queries useful not just for advocates but also for (1) nonadversarial searches for meaning and (2) careful drafting of documents.

19. *See, e.g.*, MINN. STAT. § 645.08.

meaning of an authoritative legal text."[20] "Construction," on the other hand, "gives legal effect to the semantic content of a legal text."[21] Put another way, interpretation explores "the linguistic understanding of the provision[s] at issue,"[22] whereas construction explores the "legal meaning" of a text.[23] A text's "legal meaning" includes "the authoritative meaning given to it by a judge," while the "linguistic meaning" is "the meaning communicated by the language of the text in light of the appropriate context of the communication."[24] The canonical queries can both serve as public and private law queries in both interpretation and construction, as the case may require.

To give an easy introductory example of the interpretation-construction distinction, one can imagine a carefully-negotiated contract for some illegal purpose (such as for the sale of illegal cross-firing cannons) where the parties have the same understanding of all the terms of the contract. Interpretation seeks the linguistic meaning of the contract, and that meaning is the shared linguistic understanding of the parties.[25] Construction, on the other hand, seeks legal meaning.[26] Since the contract is for an illegal purpose,

---

20. Lawrence B. Solum, *The Interpretation-Construction Distinction*, 27 CONST. COMMENT. 95, 100 (2010) [hereinafter Solum, *Interpretation-Construction*]. As Professor Solum also puts it, "interpretation" is "[t]he activity of discerning the linguistic meaning in context (or communicative content) of a legal text." Lawrence B. Solum, *Legal Theory Lexicon 063: Interpretation and Construction*, LEGAL THEORY LEXICON, http://lsolum.typepad.com/legal_theory_lexicon/2008/04/ [hereinafter Solum, *Legal Theory*] (last modified May 31, 2020).

21. Solum, *Interpretation-Construction*, *supra* note 20, at 103. Put another way, "construction" determines "the legal effect" of a text. Solum, *Legal Theory*, *supra* note 20.

22. Brian G. Slocum, *Introduction*, *in* THE NATURE OF LEGAL INTERPRETATION: WHAT JURISTS CAN LEARN ABOUT LEGAL INTERPRETATION FROM LINGUISTICS AND PHILOSOPHY 1, 5 (Brian G. Slocum ed., 2017) [hereinafter Slocum, *Introduction*].

23. *See id. See also* Brian G. Slocum, *The Contribution of Linguistics to Legal Interpretation*, *in* THE NATURE OF LEGAL INTERPRETATION: WHAT JURISTS CAN LEARN ABOUT LEGAL INTERPRETATION FROM LINGUISTICS AND PHILOSOPHY 14, 16 (Brian G. Slocum ed., 2017) [hereinafter Slocum, *Contribution of Linguistics*].

24. Slocum, *Contribution of Linguistics*, *supra* note 23, at 16. Interestingly, the Uniform Commercial Code also effectively distinguishes between interpretation and construction as follows. An "agreement" is "the bargain of the parties in fact, as found in their language or inferred from other circumstances." U.C.C. § 1-201(b)(3) (AM. LAW INST. & UNIF. LAW COMM'N 2021). A "contract," on the other hand, is "the total legal obligation that results from the parties' agreement . . . ." *Id.* §1-201(b)(12).

25. I have explored in detail the nature of linguistic meaning in both public and private law contexts in Harold Anthony Lloyd, *How to Do Things with Signs: Semiotics in Legal Theory, Practice, and Education*, 55 U. RICH. L. REV. 861 (2021) [hereinafter Lloyd, *How to Do Things*].

26. *See supra* notes 21–24 and accompanying text.

construction may find the contract unenforceable and its linguistic requirements thus no requirements at all as a matter of law.[27]

IV. THE CANONICAL QUERIES

In formulating an initial list of canonical queries for both interpretation and construction, this Article will arrange the queries first by types and then by groups. The first five types correspond to the first five basic communication stages as categorized by Alan Cruse[28] with the remaining types corresponding to the categories set out in Appendix A.[29] Using these types, the listed canonical queries are then grouped around common themes. As this Article will also show, these queries will not only aid interpretation and construction of existing texts, but they will also help at the drafting stages of a working or initial text.

A. Types and Groups of Queries

The first type of canonical queries involves the text determined to have been transmitted or presented to us.[30] Beginning with

---

27. *See* 5 WILLISTON ON CONT. § 12:4 (4th ed. 2021). One could give as another example a contract for the sale of goods where the parties fail to specify the price. Their linguistic meaning does not address the price, but construction could provide a legal meaning of "reasonable price." U.C.C. § 2-305 (AM. LAW INST. & UNIF. LAW COMM'N 2021).

28. *See* ALAN CRUSE, MEANING IN LANGUAGE: AN INTRODUCTION TO SEMANTICS AND PRAGMATICS 5 (3d ed. 2011) ("(i) The speaker normally has a purpose in communicating. (ii) The speaker constructs a message to be communicated. (iii) The speaker constructs an utterance with which to convey the message. (iv) The speaker transforms the utterance into a physical signal. (v) The speaker transmits the signal. (vi) The addressee receives the signal. (vii) The addressee decodes the signal to recover the utterance. (viii) The addressee reconstructs the message from the utterance. (ix) The addressee infers the purpose of the communication."). Cruse defines an "utterance" as "a piece of language produced on a particular occasion with a particular intent." *Id.* at 25. Since utterances are initially "mental representations," they require what Cruse calls a transmissible "signal" (such as speech sounds in the case of speech) to convey such meaning to others. *Id.* at 9. In this Article, I shall not use "signal" but rather "signifier" in the sense of "[a] linguistic unit or pattern, such as a succession of speech sounds, written symbols or gestures, that conveys meaning." *See Signifier*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1630 (5th ed. 2016).

29. *See infra* Appendix A.

30. I define "text" for purposes of this Article as: "the words or other signifiers originally used in oral, physical, or electronic works, including without limitation, constitutions, statutes, regulations, orders, contracts, wills, and other documents and instruments." This definition thus parses between, for example, a text and a summary of a text. *See, e.g.*, POPKIN, *supra* note 18, at 263 ("In the context of statutory interpretation, 'text' means the language of a statute whose meaning the judge must interpret."); *Text*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1801 (5th ed. 2016) (defining "text" as "[t]he original words of something written or printed, as opposed to a paraphrase, translation, revision,

canonical queries of such text makes sense for at least two reasons. First, it follows the common practice of most judges; they begin with what they determine to be the text even though they may have divergent theories of interpretation.[31] Second, interpretation begins at Cruse's communication stage five, where the addressee receives the signal and then proceeds to determine meaning.[32]

After the first type of queries that address transmitted signal, the additional types of canonical queries are listed in reverse order of the Cruse linguistic model.[33] This reverse order tracks the steps an inquirer would take working back from presentation of text or other signifiers to meaning, purpose, and motive.[34] Such queries set out in this Article and in Appendix A thus include not only traditional canons restated as queries but also additional queries suggested by the communication steps noted above.[35]

B. Overlap of Queries

Despite the care taken to arrange the queries in such a logical manner, there will necessarily be cases of overlap, interplay, or both. The queries themselves have differing scopes and will thus sometimes overlap. Thus, both a query as to whether a term is used in a technical sense and a query under the grammar and syntax group will consider context and, therefore, both queries are within the context group of canonical queries.

Additionally, since, for example, canonical queries looking at presented words or other presented signifiers often look back to prior stages of communication, canonical queries as to such prior stages will often come into play as well. For instance, to determine whether a word is used in a technical sense (a type of query belonging to presented signifiers), one must also look to the relevant speaker's concept(s) (a type of query belonging to meaning and utterance). The necessity and utility of such overlap and interplay should become

---

or condensation" and as "[a] passage from a written work used as the starting point of a discussion"). For purposes of this article, "written" has the meaning applicable context(s) require(s) in cases of interpretation and has the meaning required by law in cases of construction.

31. *See, e.g.*, POPKIN, *supra* note 18, at 263 (noting that "most judges begin with the text," although they might "not necessarily end with it"); United States v. Kaluza, 780 F.3d 647, 658 (5th Cir. 2015) ("'The starting point in discerning congressional intent is the existing statutory text. . . .'" (quoting Lamie v. U.S. Tr., 540 U.S. 526, 534 (2004))). As discussed in Subpart V.A below, the notion of beginning with texts-in-themselves ignores the judgment required in discerning the applicable text.

32. *See* CRUSE, *supra* note 28, at 5.

33. *Id.*

34. *See supra* note 28 and accompanying text.

35. *Id.* This Article does not purport to contain either a complete or final list or formulation of the canonical queries. I hope others will work both to expand the list of queries and to refine them.

apparent as the reader works her way through the types and groups of canonical queries presented in this Article. This overlap and interplay also demonstrate how a recasting of the canons can help lawyers forge more refined legal arguments with canonical queries.

C. This Article's Subsequent Focus

Due to space limitations, the remainder of the body of this Article focuses on initial queries of the first type: "Canonical Queries of Transmitted/Presented Text." Appendix A outlines further queries of this type as well as further types of queries and groups. I hope to explore these further queries in more detail in subsequent articles.

V. THE FIRST TYPE OF CANONICAL QUERIES: QUERIES OF TRANSMITTED/PRESENTED TEXT

The first type of canonical query involves an initial focus on the text transmitted or "presented" for interpretation or construction both as a whole and in its various parts. The term "presented" is carefully chosen here to reject the notion that the text or other signifiers needing interpretation or construction can be simply taken as *the* text without need of interpretation or construction at the very level of text itself. Thus, the first query group of this type requires us, among other things, to expressly acknowledge the judgment involved in how "broadly or narrowly" we define a given text that is to be interpreted or construed.[36]

A. The First Group of Queries of Presented Text: The Applicable Text Query and Its Subqueries

1. The Applicable Text Query

The Applicable Text Query should always be the first canonical query engaged. If one is operating from an incomplete or even inapplicable text, neither interpretation nor construction can proceed appropriately. Thus, the Applicable Text Query can be stated as follows: *Are these words, phrases, or other signifiers the applicable "text"? Given the answer, how should one proceed?*

2. No Text-in-Itself

The Applicable Text Query first reminds us that texts are not simply given to us "as is" without any need for judgment on our part as to what constitutes the operative text or whether we have the entire such text.[37] I provide two examples below of the judgment

36. *See* POPKIN, *supra* note 18, at 264 ("Textualism does not tell you how broadly or narrowly to define the text.").

37. As I have also discussed elsewhere, weaving together all relevant text can be quite complex by involving analysis of multiple types of cohesion: intentional, referential, relational, formal, contextual, and other background

required in determining operative text and then turn to subqueries of determining operative text.

3. Two Examples of Judgment Required in Determining Operative Text

a. *McGirt v. Oklahoma*: Text as Menagerie or Web?

McGirt v. Oklahoma[38] involved whether some three million acres of land in Northeastern Oklahoma, including the bulk of Tulsa, remain "an Indian reservation for purposes of Federal Criminal law."[39] Reaching the conclusion that the land remained such a reservation involved considerable judgment in collecting the operative text upon which the majority relied. Such a complex menagerie of texts included: Article I, Section 8 of the United States Constitution, Article VI, Clause 2 of the United States Constitution, the Federal Major Crimes Act, the Indian Removal Act of 1830, an 1832 treaty with the Muscogee Nation (Creeks), an 1833 treaty with the Creeks, an 1856 treaty with the Creeks, an 1866 treaty with the Creeks, an 1866 treaty with the Cherokees, a federal statute of 1873 with "multiple references to the 'Creek reservation' and 'Creek India[n] Reservation,'" language in the 1881 Congressional Record addressing "the dividing line between the Creek reservation and their ceded lands," an 1882 act opening reservation land to settlement, the 1887 General Allotment Act, an 1891 act "describing a cession by referencing the 'West boundary line of the Creek Reservation,'" an 1893 act seeking ceding or allotment of lands, an 1894 report that the Creek would not cede lands, an 1898 act abolishing Creek tribal courts and transferring pending cases to United States Indian Territory courts, the 1901 Creek Allotment Act, the 1906 Five Civilized Tribes Act, a 1908 statute relaxing or permitting waiver of alienation restrictions, a 1908 act seeking tribal properties, a 1909 act seeking release of certain monetary claims, a 1924 act offering a litigation opportunity, 1936 Congressional authorization of the Creeks "to adopt a constitution and bylaws" and to reauthorize "tribal courts to hear minor crimes in Indian country," and a 1982 ordinance establishing again civil and criminal jurisdiction of the Creek Nation's courts.[40]

The majority held that the operative text in *McGirt* was unlike a 1904 act that expressly abolished Ponca Tribe of Nebraska and Otoe-Missouria Tribe reservations after allocating land, and the majority thus held in favor of reservation status "for purposes of Federal

types of cohesion. *See* Harold Anthony Lloyd, *Law's "Way of Words": Pragmatics and Textualist Error*, 49 CREIGHTON L. REV. 221, 242–49 (2016) [hereinafter Lloyd, *Law's "Way of Words"*].

38. 140 S. Ct. 2452 (2020).

39. *Id.* at 2459.

40. *Id.* at 2459–67.

Criminal law" because it found nothing in the individual pieces of the textual menagerie above that expressly abolished the Creek's reservation "for purposes of Federal Criminal law."[41] The dissent rejected this approach, arguing that the applicable statutes taken in context showed "Congress's plain intent to terminate the reservation," and the dissent thus rejected what it saw as the majority's tackling separate statutes in isolation.[42] These differing views further underscore deeper critical judgments involved in determining the type of text involved. The dissent would weave the text into a more interconnected and contextual web indicating termination, while the majority collected its menagerie and then demanded express termination from at least one of the pieces.

b. Mount Sinai and the Determination of Text

Lawyers still doubting the judgment involved in determining text itself might also consider a religious example: The Ten Commandments. Although it might surprise many, this example also belies the claim that we simply start with texts-in-themselves and then proceed to interpretation and construction. First, there is no universally accepted formulation of the Ten Commandments.[43] Second, the Ten Commandments are not discretely set forth in the Bible as many may believe; instead, their compilation has required judgment in selecting and omitting language from parts of Exodus and Deuteronomy, such as Exodus 20:2–17 and Deuteronomy 5:6–21.[44] I refer the readers to evaluate on their own the various texts of the Ten Commandments drawn from Exodus and Deuteronomy (including evaluating such questions as whether ten is the "best" number).

4. Subqueries of the Applicable Text Query

To begin the Applicable Text Query (after having grasped the above point that texts do not exist in themselves apart from the judgment required to determine them), one should subquery whether one is presented with all the original words or other signifiers of the speaker which constitute the operative text.[45] Such a query (as with all queries) will require judgment and not blind faith that one has been simply presented with a text-in-itself. Such a subquery includes

41. *Id.* at 2459, 2465. The dissent argued that the applicable statutes taken in context showed "Congress's plain intent to terminate the reservation," and the minority thus objected to the majority's tackling separate statutes in isolation. *Id.* at 2494 (Roberts, C.J., dissenting).

42. *Id.*

43. *See, e.g.*, *Ten Commandments*, ENCYC. BRITANNICA, https://www.britannica.com/topic/Ten-Commandments (last visited Feb. 4, 2022

44. *See, e.g.*, *id.*

45. For the definition of "text" used in this Article, see *supra* note 30 and accompanying text.

queries of transmission addressed in the second type of queries outlined in Appendix A. For example, in private law contract cases, one would investigate whether all pages or words of a contract have been transmitted from the original speaker, whether no irrelevant pages have been included, and whether no amendments or other relevant texts also exist. In public law cases, one might, among other things, investigate whether the statutory language from a provider is accurate and whether the language of a codified statute accurately reflects the bill that was passed.[46] One might also ask whether a statute whose text has been verified in the manner discussed above is nonetheless incomplete unless read along with a supplementary statute.

If one concludes that relevant text is missing, one must of course investigate whether such text is available. If one concludes that such text is unavailable, a further subquery arises in, for example, private law contexts: Does one nonetheless have all of the words or other signifiers "that actually affect [sic] the transaction [such as] the particular phraseology by which the object of a legal instrument is given effect"?[47] Thus, one might find that one is missing a site plan to a lease agreement but might conclude nonetheless that the lease agreement otherwise sufficiently describes the property in a manner that makes the lease enforceable.

5. Drafting and the Applicable Text Query

Finally, this query is particularly helpful during the drafting process. In the drafting process and when reviewing drafts before circulation, the query would remind drafters to ask whether they have drafted to the desired level of completeness, whether all necessary operative terms are included, whether all relevant drafted texts (such as all pages and exhibits) are included, and whether other texts involving the subject matter have been properly considered. Drafters can also use many of the subsequent subqueries to their advantage as well.

---

46. *See* Rob Sukol, *Positive Law Codification of Space Programs: The Enactment of Title 51, United States Code*, 37 J. SPACE L. 1, 9–21 (2011) (discussing the codification process); Wash.-Dulles Transp., Ltd. v. Metro. Wash. Airports Auth., 263 F.3d 371, 377–79 (4th Cir. 2001) (discussing when the language of the Statutes at Large controls if it conflicts with the language of the positive law codification); *see also* JANE C. GINSBURG & DAVID S. LOUK, LEGAL METHODS: CASE ANALYSIS AND STATUTORY INTERPRETATION 63 (5th ed. 2020) (noting that codification can leave out "important portions" of bills and further noting that various titles of the U.S. Code "have been enacted into positive law" and are thus "the official and authoritative source of the statute law"). Determining the operative text of a statute can thus involve more than simply turning to a jurisdiction's code.

47. *See Operative Words*, BLACK'S LAW DICTIONARY (11th ed. 2019).

B. The Second Group of Queries of Presented Text: Initial Canonical Queries and Subqueries of Textual Clarity

This second group of queries addresses initial questions of textual clarity once one has determined the operative text. Of course, queries in subsequent groups will also involve other aspects of clarity, as do queries in the first group involving determination of the operative text. Such interrelation of differing queries is an unsurprising aspect of the hermeneutic circle.[48] Additionally, clarity questions can arise at both the level of the signified and the signifier. For example, is a word clear? Is the concept signified by the word clear?

1. The Plain Meaning Query

a. The Plain Meaning Canon

The plain meaning rule holds that "if a legal text is unambiguous it should be applied by its terms without recourse to policy arguments, legislative history, or any other matter extraneous to the text unless doing so would lead to an absurdity."[49] Consistent with this formulation of the plain meaning rule, *Tims v. LGE Community Credit Union*,[50] for example, notes that under Georgia's plain meaning approach:

> [C]ourts interpret contracts in three steps: first, the court determines whether the contract language is clear and unambiguous. If the language is clear, the court applies its plain meaning; if it is unclear, the court proceeds to step two. At step two, the court attempts to resolve the ambiguity using Georgia's canons of contract construction. If the ambiguity cannot be resolved using the canons, then the court proceeds to

48. Following in the steps of Emilio Betti, Charles Taylor discusses what has been called the "hermeneutical circle." *See* Chrysostomos Mantzavinos, *Hermeneutics*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY 2 (June 22, 2016), https://stanford.library.sydney.edu.au/archives/fall2016/entries/hermeneutics/ ("The circle can . . . be put in terms of part-whole relations: we are trying to establish a reading for the whole text, and for this we appeal to readings of its partial expressions; and yet because we are dealing with meaning, with making sense, where expressions only make sense or not in relation to others, the readings of partial expressions depend on those of others, and ultimately of the whole."); *see also, e.g.*, CHRIS LAWN & NIALL KEANE, THE GADAMER DICTIONARY 71 (2011) (discussing Schleiermacher's notion of the hermeneutic circle as "a circle that binds the understanding of the entire text to an understanding of its parts").

49. *Plain-Meaning Rule*, BLACK'S LAW DICTIONARY (11th ed. 2019). One might compare Popkin here who considers "plain meaning" to be a synonym for the "common understanding" which occurs when an "author and audience share a *common* understanding of what the text means." POPKIN, *supra* note 18 and accompanying notes, at 38, 207.

50. 935 F.3d 1228 (11th Cir. 2019).

> step three, where the parties' intent becomes a question of fact for the jury.[51]

b. Problems with the Notion of Plain Meaning

The notion of a text as unambiguous in itself cannot stand. Written words typically have multiple standard meanings (not to mention nonstandard meanings an author might wish to use). For example, the written word "tie" could include such meanings as: "a line, ribbon, or cord used for fastening, uniting, or drawing something closed," "any of the transverse supports to which railroad rails are fastened to keep them in line," "a low laced shoe," or a "necktie."[52] As the word can have such multiple meanings, the word itself can never be plain as to the intended meaning. Instead, as discussed in Subpart II.A. above, one must at the very least put the word in context to determine the intended meaning. To the extent any notion of plain meaning suggests otherwise, it is simply wrong.

Turning to context, if the word is used in a sentence such as "he sported a nice tie with that suit," we might have sufficient evidence that we are talking about "tie" as a necktie. However, that would assume use of "sport" in the sense of wearing (rather than, say, in the sense of self-amusement or engaging in a sport) and nice in the sense of pleasing (rather than, say, well executed)[53] as well as "suit" in the sense of a business suit (rather than, say, a gym suit, a lawsuit, or a bathing suit).[54] *However, if we reject these assumptions, we could with proper English find that the speaker meant the equivalent of "someone amused himself with a well-executed knot while wearing a gym suit!"*

One might retort that these other possible meanings would be ludicrous. Yet, to take such a position requires looking off the page and looking at both what people do and how people speak. And this objection takes us back to a fundamental point: meaning is off the page and words can never *in themselves* have plain meaning.

Thus, the definition of the plain meaning rule used above also carefully notes that "this rule is often condemned as simplistic because the meaning of words varies with the verbal context and the surrounding circumstances, not to mention the linguistic ability of the users and readers (including judges)."[55]

---

51. *Id.* at 1237.

52. *Tie*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/tie (last visited Mar. 23, 2022).

53. *See Sport*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/sport (last visited Mar. 23, 2022); *Nice*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/nice (last visited Feb. 4, 2022).

54. *Suit*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/suit (last visited Mar. 23, 2022).

55. *See Plain-Meaning Rule*, *supra* note 49 and accompanying text.

c. One Resulting Formulation of the Plain Meaning Query

Taking note of the above concerns, one might formulate the plain meaning query as follows: *As a matter of interpretation or construction as the case may be, how clearly do these words or phrases signify the speaker's or author's meaning when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* This query can, of course, be modified to fit specific texts. If, for example, we are speaking of a state statute, we can substitute "legislature's meaning" for "speaker's or author's meaning."

d. Plain Meaning and Clarity

Since our query has used "clear," we must be clear about the meaning of "clear." To be "clear" means to be "free from obscurity or ambiguity."[56] In addition to other queries and subqueries set forth in other sections of this Article which tie into questions of clarity, three broad queries of clarity logically leap to the forefront. Is the meaning of the text ambiguous? Is the meaning of the text vague? Is the meaning of the text indeterminate? I thus next explore ambiguity, vagueness, and indeterminacy as three formal subqueries of the plain meaning query.[57]

2. The Ambiguity Subquery

a. The Ambiguity of Ambiguity

In common speech, "ambiguous" has two differing senses: "doubtful or uncertain especially from obscurity or indistinctness" and "capable of being understood in two or more possible senses or ways."[58] Lawyers often use the term in much the same way. *Black's* defines "ambiguity" as "[d]oubtfulness or uncertainty of meaning or intention, as in a contractual term or statutory provision; indistinctness of signification, [especially] by reason of doubleness of interpretation."[59]

For greater clarity of thought, I shall parse the difference between ambiguity and vagueness (discussed in Subpart V.B.3 below). I shall therefore focus upon ambiguity as the capability "of

56. *Clear*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/clear (last visited Mar. 23, 2022).

57. Due to space limitations and my belief that more is often not required, I do not set out formal, express formulations for all subqueries noted in this Article. These subqueries, however, play sufficiently important roles to merit such treatment.

58. *Ambiguous*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/ambiguous (last visited Mar. 23, 2022).

59. *Ambiguity*, BLACK'S LAW DICTIONARY (11th ed. 2019).

being understood in two or more possible senses or ways."[60] One can, as I have done elsewhere,[61] further refine this understanding of ambiguity to hold that ambiguity requires difficulty or impossibility of determining "which of a number of . . . meanings is intended" in certain contexts.[62] Without this further qualifier, "virtually every expression is ambiguous, because virtually every expression allows for more than one interpretation."[63]

Additionally, ambiguity can be of three different kinds: semantic, syntactic, and pragmatic.[64] Semantic ambiguity occurs where words or phrases or entire texts can reasonably have different meanings within a given context or contexts.[65] For example, again, is a "tie" in a given context "a line, ribbon, or cord used for fastening, uniting, or drawing something closed," "any of the transverse supports to which railroad rails are fastened to keep them in line," "a low laced shoe," a "necktie," or something else?[66] Again, we cannot answer that question without reference to the given context. Syntactic ambiguity exists "when there is uncertain meaning resulting from unclear grammatical references."[67] For example, does "ripe apples, pears, and figs" mean that all three must be ripe, or does it mean something like "pears, figs, and ripe apples"? By pragmatic ambiguity, I mean an ambiguity that results from the actual linguistic practices of the parties.[68] For example, the unique meaning of a term used by the parties to a contract can create a pragmatic ambiguity by adding an additional meaning for the term "bushel" if the parties use "bushel" to refer to the volume of a specific bucket that the parties themselves use for transactions even though that bucket may not contain a standard bushel volume.

---

60. See *Ambiguous*, *supra* note 58.

61. Lloyd, *Law's "Way of Words," supra* note 37, at 268–71.

62. WALTER SINNOTT-ARMSTRONG & ROBERT FOGELIN, UNDERSTANDING ARGUMENTS: AN INTRODUCTION TO INFORMAL LOGIC 333 (8th ed. 2009).

63. *Id.* at 334.

64. *See* POPKIN, *supra* note 18, at 11; CRUSE, *supra* note 28, at 100. When considering these types of ambiguity in words or other signifier's, one should of course remember that an ambiguous word or other signifier does not mean that the signified is itself unclear. For example, the word "tie" may be ambiguous as to whether it refers to neckties but that does not mean that neckties themselves are necessarily unclear. Similarly, in reverse, one may encounter a word that unambiguously refers to an unclear concept.

65. See POPKIN, *supra* note 18, at 238–39.

66. *Tie*, *supra* note 52.

67. POPKIN, *supra* note 18, at 258.

68. Pragmatics is "a branch of semiotics that deals with the relation between signs or linguistic expressions and their users." *Pragmatics*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/pragmatics (last visited Mar. 23, 2022).

b. One Formulation of the Subquery of Ambiguity

In light of the above, one might formulate the subquery of ambiguity as follows: *As a matter of interpretation or construction as the case may be, do these words or phrases signify the author's or speaker's meaning in a way that is semantically, syntactically, or pragmatically ambiguous when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* (Again, this query can also be modified to fit specific texts. If, for example, we are speaking of a state statute, we can substitute "legislature's meaning" for "author's or speaker's meaning.") So phrased, this subquery not only reminds us of the three types of ambiguity, but also it reminds us that meaning and ambiguity are resolved by context and other available evidence. In cases of interpretation at least, this formulation's reliance upon context and other evidence beyond the text thus rejects rules like the following rule in *Tims* to the extent that they do not consider applicable context beyond the words themselves: "A contract is unambiguous when, after examining the contract as a whole and affording its words their plain meaning, 'the contract is capable of only one reasonable interpretation.'"[69]

c. *Tims v. LGE Community Credit Union*: Contract Interpretation and Parties' Meaning

Tims provides a brief example of the interplay of interpretation and private law ambiguity and the useful role of the ambiguity subquery where canons have failed. In examining the propriety of a Rule 12(b)(6) motion to dismiss in favor of a credit union, the court in *Tims* examined whether contract documents signed by the credit union and its customer provided an unambiguous method for calculating "unsettled withdrawals in imposing overdraft fees" using either "the available balance calculation method or the ledger balance calculation method."[70] Because the applicable text could reasonably be understood to require either such method, it was thus ambiguous—i.e., it was capable "of being understood in two or more possible senses or ways."[71]

Turning to the applicable text in more detail, the parties had signed an Opt-In Agreement which provided that "[a]n overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway."[72] On the face of the text, the distinction between available or ledger balance was thus not expressly addressed, therefore leading to at least a semantic

69. Tims v. LGE Cmty. Credit Union, 935 F.3d 1228, 1237 (11th Cir. 2019).
70. *Id.*
71. *See Ambiguous*, *supra* note 58.
72. *Tims*, 935 F.3d at 1238.

ambiguity. In light of this semantic imprecision, the customer claimed that "enough money in your account" referred to a ledger balance since there was no limitation language such as "available balance," while the credit union maintained that "enough" referred to available balance.[73] The text of the parties' Account Agreement and Funds Availability Disclosure did not resolve these ambiguities.[74] Finding no satisfactory resolution of the ambiguity with canons of construction,[75] the court reversed and remanded the case, noting that the jury must decide the parties' intent if neither party is granted summary judgment.[76]

Although the court found no resolution using canons of construction, the ambiguity *subquery* can assist trial courts where both text and canons fail. Rather than attempting to dictate results based on text alone, the subquery parses between types of ambiguity, stresses context and other available evidence, and carries the matter further by prodding for a resolution of speaker or author meaning as a matter of both interpretation and construction. Thus, in addition to the semantic ambiguities examined by the court, the subquery also prompts queries as to context and other available evidence, as to possible further pragmatic ambiguity if the parties used the terms among themselves in unique ways, and as to the need to determine actual speaker or author meaning.

In exploring such contexts and other available evidence, potential additional pragmatic ambiguities, and actual speaker or author meaning, we might find that the parties ascribed the same meaning to their terms. If, however, we find that the parties assigned different meanings to their terms, such divergent linguistic meanings give no single answer. In such a case, we are thus forced to invoke applicable law to determine the result of such divergence of meaning.[77]

3. The Vagueness Subquery

a. The Ambiguity of Vagueness

Lawyers use vagueness (1) to mean "[u]ncertain breadth of meaning; unclarity resulting from abstract expression," such as found within the phrase "within a reasonable time" or (2) more loosely to mean ambiguity.[78] The term "in its narrowest philosophical sense refers to terms *whose boundaries* are uncertain but whose application

73. *Id.*

74. *See id.* at 1235–36, 1245.

75. *Id.* at 1237–42.

76. *Id.* at 1242, 1245.

77. *See, e.g.*, Milner v. Milner, 360 S.W.3d 519, 520 (Tex. Ct. App. 2010); *see also* RESTATEMENT (SECOND) OF CONTS. § 201(2)–(3) (AM. LAW INST. 1981) (addressing where parties have "attached different meanings to a promise or agreement or a term thereof").

78. *Vagueness*, BLACK'S LAW DICTIONARY (11th ed. 2019).

at the core is usually quite certain."[79] In this Article, I shall use the term in this last and narrowest sense of referring to "terms *whose boundaries* are uncertain." In considering the concept of vagueness, one can also consider the concept of "open-ended texts" which "invite the court to provide meaning."[80]

b. One Formulation of the Vagueness Subquery

Working from both the concepts of vagueness and open-ended texts, one might begin tackling vagueness with the following subquery: *As a matter of interpretation or construction as the case may be, do these words or phrases signify the author's or speaker's meaning in a way that is vague when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* Again, this query can be modified to fit specific texts. If, for example, we are speaking of a statute, we can substitute "legislature's meaning" for "author's or speaker's meaning."

c. Vagueness and Interpretation

When applying this subquery to interpretation of vague textual words or phrases, one must first remember that a vague signifier does not necessarily mean that the intended signified is vague.[81] For example, both parties might mean by "reasonable" office space temperature a very specific temperature range of within three degrees of 68 degrees Fahrenheit, even though the text might simply use the word "reasonable."

---

79. *Id.* (quoting BRIAN H. BIX, A DICTIONARY OF LEGAL THEORY 217 (2004)).

80. *See* POPKIN, *supra* note 18, at 203 (discussing statutory texts and considering such terms as "reasonable," "unfair," "appropriate," and "unconscionable" as "open-ended"). Popkin contrasts open-ended text with vagueness which he considers "a type of linguistic uncertainty that denotes gray areas between white and black." *Id.* at 280. I shall use the above *Black's* definition of "vagueness" because I believe it comports more closely with standard usage. *Merriam-Webster*, for example, includes in its definitions of "vagueness" this definition: "stated in indefinite terms." *Vagueness*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/vagueness (last visited Mar. 23, 2022). Likewise, *Merriam-Webster* includes in its definitions of "indefinite" the following definition: "having no exact limits." *Indefinite*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/indefinite (last visited Mar. 23, 2022).

81. Nor, for that matter, does a clear term necessarily mean that the meaning signified is not vague. For example, a contract as drafted between brothers may provide specific monthly installment payment amounts though both brothers may have intended and understood that any installment payment amount would be reduced to the extent that the payor was "unreasonably" unable to pay the stated payment amount or that the stated payment amount would otherwise be "unfair" to the payor under current circumstances of a given month.

In applying the vagueness subquery in interpretation, one must also determine whether the words or phrases used in particular cases are unintentionally or intentionally vague. If the words or phrases are unintentionally vague as in the case of the office lease above, one should seek as a matter of interpretation to find the parties' actual meaning.

On the other hand, if the words or phrases are intentionally vague, then one must explore the type of vagueness intended in their interpretation. If the parties intentionally used vague words or phrases to ignore addressing contentious issues by name, then the parties might nonetheless have had specific understandings of the vague terms used. In a community where unisex bathrooms are controversial, for example, the parties to an office lease may both understand that the provision of "reasonable bathroom facilities" means provision of unisex bathroom facilities. Although the parties agree that bathrooms will be unisex, they might use the vague term "reasonable" to avoid potential controversy within the community during the drafting and initial leasing stage.

Another wrinkle exists when parties use a vague signifier to signify something which is itself vague. In such cases, as a matter of interpretation, one must explore what the parties meant by their vague notion which is also vaguely signified. First, they may have understood their notion to be an "open-ended" notion along Popkin's lines and thus expected the courts or lawmakers to more clearly define it.[82] For example, the parties to an office lease may agree that the landlord must provide "reasonable" numbers of parking spaces for tenants and may intend for "reasonable" to be determined by the applicable parking ratio ordinances from time to time. If so, then accurate interpretation must recognize such meaning. Similarly, in a public law context, a legislature may use "fair" or "reasonable" in a statute in an "open-ended" sense that would "invite the court to provide meaning."[83] Second, the parties may simply agree to use a vague notion both to avoid dispute during negotiation and to avoid the possibility that negotiation may break down. Thus, the parties to another office lease may agree that the landlord must provide "reasonable" numbers of parking spaces for tenants without having

82. *See* POPKIN, *supra* note 18, at 203.

83. *See id.* (discussing statutory texts and considering such terms as "reasonable," "unfair," "appropriate," and "unconscionable" as "open-ended"). Popkin contrasts open-ended text with vagueness which he considers "a type of linguistic uncertainty that denotes gray areas between white and black." *Id.* at 280. I use *Black's* definition of "vagueness" instead of Popkin's definition because I believe *Black's* definition comports more closely with standard usage. Again, *Merriam-Webster* includes in its definitions of "vagueness" the definition: "stated in indefinite terms," *Vagueness*, *supra* note 80, and *Merriam-Webster* likewise includes in its definitions of "indefinite" the definition: "having no exact limits," *Indefinite*, *supra* note 80.

individual understandings of what that means. In such a case, the parties might or might not have expected the courts to supply such meaning. If they did not expect the courts to supply such meaning, as a matter of interpretation, the term "reasonable" would therefore lack any common speaker or author meaning, since the term signifies nothing meant by the parties either themselves or through reference to the courts. Construction would therefore be required to determine the effect of such a failure of legislators' supplied meaning.[84]

d. *United States v. Powell*: Vagueness and the Interpretation and Construction of a Criminal Statute

United States v. Powell[85] provides a good public law example of both interpreting a vague criminal statute (here, a statute addressing the mailing of certain firearms) and debating whether the vagueness requires construction of the statute as unconstitutionally vague for lack of suitable notice.[86] In *Powell*, a person was prosecuted under 18 U.S.C. § 1715 for mailing "a sawed-off shotgun with a barrel length of 10 inches and an overall length of $22\frac{1}{8}$ inches."[87] The statute provided that:

> Pistols, revolvers, and other firearms capable of being concealed on the person are nonmailable . . . . Whoever knowingly deposits for mailing or delivery, or knowingly causes to be delivered by mail according to the direction thereon . . . any pistol, revolver, or firearm declared nonmailable by this section, shall be fined not more than $1,000 or imprisoned not more than two years, or both.[88]

As a matter of interpretation, the question was whether such a sawed-off shotgun fell under the category of "other firearms capable of being concealed on the person."[89] The respondent maintained that the canon of *ejusdem generis* (discussed in Appendix A) should apply and therefore "the more general language of the statute ('firearms') should be limited by the more specific language ('pistols and revolvers') so that the phrase 'other firearms capable of being

84. *See, e.g.*, Milner v. Milner, 360 S.W.3d 519, 520 (Tex. Ct. App. 2010); ("Because we hold that there was no meeting of the minds . . . [we likewise hold that there] was not a binding contract . . . ."); RESTATEMENT (SECOND) OF CONTS. § 201(2)–(3) (AM. LAW INST. 1981) (addressing where parties have "attached different meanings to a promise or agreement or a term thereof").

85. 423 U.S. 87 (1975).

86. *Id.* at 88.

87. *Id.* at 89.

88. *Id.* at 89 n.3.

89. *Id.* at 90.

concealed on the person' would be limited to 'concealable weapons such as pistols and revolvers.'"[90]

In interpreting the statute, however, the Court considered the phrase "firearms capable of being concealed on the person" in itself, the legislative history suggesting the bill's purpose was "to make it more difficult for criminals to obtain concealable weapons," and evidence at trial that the firearm at issue "could be concealed on an average person."[91] The Court held that reading the statute to apply "to only those weapons which could be concealed as readily as pistols or revolvers" would not be consistent with the bill's purpose and concluded that a sawed-off shotgun in this case was covered by the statute.[92]

In construing whether the phrase "other firearms capable of being concealed on the person" was unconstitutionally vague, the Court observed that the statute "intelligibly forbids a definite course of conduct: the mailing of concealable firearms. While doubts as to the applicability of the language in marginal fact situations may be conceived, we think that the statute gave respondent adequate warning that her mailing of a 22-inch-long sawed-off shotgun was a criminal offense."[93]

In this public law example, the Court thus both interpreted the statute to determine whether it covered by its terms the firearm at issue and construed the statute to determine the constitutionality of the vagueness inherent in the phrase "other firearms capable of being concealed on the person." Although the phrase did not have conceptual boundaries as clear as the terms "pistols" or "revolvers," the Court held nonetheless that the statute gave sufficient notice of what was prohibited.[94] In so holding, the Court observed: "[t]he fact that Congress might, without difficulty, have chosen '(c)learer and more precise language' equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague."[95]

---

90. *Id.* In his concurrence in part and dissent in part, Justice Stewart thought that *ejusdem generis* should apply and disagreed with the majority's reading of the legislative history. *Id.* at 94–95 (Stewart, J., concurring in part and dissenting in part). I explore *ejusdem generis* in Appendix A.

91. *Id.* at 89–91.

92. *Id.* at 91.

93. *Id.* at 90–93.

94. *Id.* at 92–93.

95. *Id.* at 94.

4. The Indeterminacy Subquery

a. Types of Indeterminacy

In addition to vagueness and ambiguity, lawyers also encounter the different matter of indeterminacy which occurs at what legal scholars have called epistemic and metaphysical levels.[96]

Epistemic indeterminacy exists where there are (currently at least) no means to reasonably determine the matter at hand.[97] For example, we would have epistemic indeterminacy when presented with an encrypted meaning which we are unable to break. Such indeterminacy would disappear should we find the key to the encryption. Epistemic indeterminacy also exists where we (currently at least) lack the means to discern or resolve speaker or author meaning in a given case. In such a case, we would construe the legal effect of such indeterminate meaning. (Again, construction is distinguished from interpretation as discussed in Part III above).

Metaphysical indeterminacy occurs when a proposition "is neither correct nor incorrect."[98] For example, Professor Kent Greenawalt considers "[a] claim that chocolate ice cream is best is indeterminate in the metaphysical sense" because "there is no correct answer to which flavor of ice cream is best."[99] The canonical queries can, of course, only address what is meant by such metaphysically indeterminate claims; the canonical queries cannot resolve such indeterminate claims.[100] To put it another way, the canonical queries of course cannot resolve the unresolvable.

b. One Formulation of the Indeterminacy Query

The indeterminacy query might thus be formulated as follows: *As a matter of interpretation or construction as the case may be, do these words or phrases signify the author's or speaker's meaning in a way that is indeterminate when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed?* Again, this query can be

96. *See* KENT GREENAWALT, LEGAL INTERPRETATION: PERSPECTIVES FROM OTHER DISCIPLINES AND PRIVATE TEXTS 42–45 (2010) [hereinafter GREENAWALT, LEGAL INTERPRETATION] (discussing epistemic and metaphysical indeterminacy). I contrast the forms of indeterminacy here with vagueness and its indeterminacy in the sense of lack of boundaries.

97. *See id.* at 42 ("Epistemic indeterminacy may exist if highly reasonable people, as well informed as is practical, have an unresolvable disagreement about whether [something] is correct, or have no idea whether it is correct.").

98. *Id.*

99. *Id.*

100. Nor is their purpose to resolve truth claims unrelated to meaning. For example, the queries seek to resolve the meaning of phrases such as "I represent that this car has been driven 200 miles" but not to resolve whether the car has in fact only been driven 200 miles.

modified to fit specific texts. If, for example, we are speaking of a statute, we can substitute "legislature's meaning" for "author's or speaker's meaning."

C. The Third Group of Queries of Presented Text: Canonical Queries of Grammar, Syntax, and Other Rules of Language

1. The Ordinary Meaning Query

a. The Ordinary Meaning Canon

The ordinary meaning canon provides that: "words in a legal instrument are to be understood in their ordinary, everyday meanings unless the context indicates that they bear a technical sense or are otherwise defined in the text."[101] If one were to give the ordinary, everyday meaning to "technical" here, one might assume that technical language means "marked by or characteristic of specialization."[102] However, in light of other language used by *Black's Law Dictionary*, "technical" presumably means "a specialized or peculiar meaning in a given context [that] appears in that context."[103]

So interpreted, this canon would thus recognize that we do not always use words in their ordinary, everyday senses and that technical senses can involve "peculiar meanings" in "given contexts."[104] As I have written elsewhere in detail, pragmatics, a subfield of semiotics, addresses how actual language use in fact often deviates from the "ordinary" even when individual words are used in the "ordinary" senses.[105] (As in the famous Gricean example where a philosophy professor gives a student a bad recommendation by using these words in their "ordinary" meaning: "Dear Sir, Mr. X's command

101. *Ordinary-Meaning Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019). This definition presumably at least touches on Popkin's notion of "common understanding" which occurs when an "author and audience share a *common* understanding of what the text means." POPKIN, *supra* note 18, at 38. Questions of ordinary meaning can lie at both the level of the signifier and the signified. In the signifier context, one might ask "Is this word used in an 'ordinary' way?" In the signified context, one might ask "Is the concept signified an 'ordinary' use of such concept?"

102. *Technical*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/technical (last visited Mar. 23, 2022).

103. *See Technical-Meaning Exception*, BLACK'S LAW DICTIONARY (11th ed. 2019).

104. *See supra* Subpart V.B.2.a (discussing "bushel" as an example).

105. *See, e.g.*, Harold Anthony Lloyd, *Making Good Sense: Pragmatism's Mastery of Meaning, Truth, and Workable Rule of Law*, 9 WAKE FOREST J.L. & POL'Y 199, 207–10 (2019) [hereinafter Lloyd, *Making Good Sense*]; Lloyd, *How to Do Things*, *supra* note 25, at 863–66; Lloyd, *Law's "Way of Words," supra* note 37, at 256–65.

of English is excellent, and his attendance at tutorials has been regular.")[106]

When exploring "ordinary" meaning, one must thus grasp how any "ordinary" meaning of particular words may point to further meaning beyond such ordinary meaning. Technical and other terms not used in an "ordinary" sense can of course also be used to point to further meaning. The philosophy professor above, for example, might have written: "Dear Sir, Mr. X's command of a CAT Scanner is excellent." I briefly address such potential further meaning with the further meaning query set forth in Subpart V.C.5 below.

b. Ordinary vs. Plain Meaning

Returning to ordinary meaning, one can at the outset contrast ordinary meaning questions with the plain meaning query. As suggested in this Article, the plain meaning query explores the presence or absence of ambiguity, while the ordinary meaning canon explores whether terms are used in ordinary, everyday ways. For example, when examining the meaning of the term "insolvent" in a contract, one might consider the term to have an ordinary, everyday meaning of either "unable to pay debts as they fall due in the usual course of business" or "having liabilities in excess of a reasonable market value of assets held."[107] That said, one might also find the term used in an ambiguous way in a particular context. For example, does the term as used have either or both of the above ordinary meanings? Ordinary and plain meaning thus have different senses.

c. One Formulation of the Ordinary Meaning Query

To accord with the variations seen in actual "ordinary" language usage, the ordinary meaning query might thus be phrased as follows: *As a matter of interpretation or construction as the case may be, do these words or phrases signify an ordinary or otherwise normally expected nontechnical author or speaker meaning, when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* Again, this query can be modified to fit specific texts. If, for example, we are speaking of a statute, we can substitute "legislature's meaning" for references to an "author's or speaker's meaning."

---

106. *See* PAUL GRICE, STUDIES IN THE WAY OF WORDS 33 (1989) (quoting the professor's recommendation); *see also* Lloyd, *Law's "Way of Words," supra* note 37, at 231. For a discussion of words used in "ordinary" senses that convey a meaning beyond the "ordinary" meaning of such words, see *id.* at 238–39 (discussing implicatures and indirect coding of meaning such as that found in Grice's recommendation letter example above).

107. *Insolvent*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/insolvent (last visited Mar. 23, 2022).

When speaking of "ordinary" meaning, one should remember that "ordinary" itself can have widely differing meanings. These include "of a kind to be expected in the normal order of events" ("an *ordinary* day"), "of common quality, rank, or ability" ("an *ordinary* teenager"), "deficient in quality" ("*ordinary* wine"), and "a prelate exercising original jurisdiction over a specified territory or group" ("the *ordinary* of a diocese is a bishop").[108] The meaning used here is of course the first. ("Normally" and "expected" likewise have various ordinary meanings, which I will not recite here for lack of space.)[109]

d. Interpretation Subqueries of the Ordinary Meaning Query

How do we determine what is ordinary or normally expected? One can of course appeal to dictionaries but this would raise at least two concerns. First, parties may use terms in the normal course of practice that differ from dictionary definitions.[110] Second, lawyers might simply shop dictionaries to find meanings that best suit their purposes. One might attempt to address such dictionary shopping by requiring use of dictionaries that rank definitions in order of their frequency of usage. For example, *The American Heritage Dictionary of the English Language* claims to arrange its definitions "with the central and often the most commonly sought meaning first."[111] One might also, for example, look to corpus linguistic analyses to determine frequencies of use and attempt to draw conclusions from such data.[112]

---

108. *Ordinary*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/ordinary (last visited Mar. 23, 2022).

109. *See Expected*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/expected (last visited Mar. 23, 2022); *Normally*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/normally (last visited Mar. 23, 2022).

110. *See supra* Subpart V.B.2.a (examining a "bushel" hypothetical demonstrating this point); *see also* RESTATEMENT (SECOND) OF CONTS. § 201(1) (AM. LAW INST. 1981) ("Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning.").

111. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE xxiv (5th ed. 2011). Other dictionaries, however, can take a different approach. For example, the editors of *Merriam-Webster's Collegiate Dictionary* note that they use a historical order of definitions: "the sense known to have been first used in English is entered first." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 20a (11th ed. 2005).

112. *See, e.g.*, Daniel Ortner, *The Merciful Corpus: The Rule of Lenity, Ambiguity and Corpus Linguistics*, 25 B.U. PUB. INT. L.J. 101, 120–24 (2016) (addressing the use of corpus linguistics in statutory interpretation); James C. Phillips & Josh Blackman, *Corpus Linguistics and* Heller, 56 WAKE FOREST L. REV. 609, 616, 623–24, 635–36, 645, 658, 681 (2021) (addressing the use of corpus linguistics in constitutional interpretation).

But how would such frequencies of use (even if accurately ranked) tell us which of the ranked meanings apply in diverse actual contexts? What is *the* ordinary meaning of the phrase "[v]ehicles or self-propelled machines or autos you manufacture, process or warehouse" as used in a particular insurance policy?[113] Would a front-end loader fall under that phrase when such equipment was dismantled for maintenance and was damaged by a fire to workshop space in which such equipment was located? The term "warehouse" includes a "storehouse" in the first definition of *The American Heritage Dictionary of the English Language* and might thus seem sufficiently broad to cover a front-end loader "stored" there.[114] However, the second definition of "warehouse" refers to a "large, usually wholesale shop."[115] As for "process," the first definition in *The American Heritage Dictionary of the English Language* includes "a series of actions, changes . . . bringing about a result," and the second includes "a series of operations performed in the making or treatment of a product."[116] Such definitions might themselves seem to cover the front-end loader, but do we ordinarily speak of repairing equipment as processing equipment?[117] In addition to the lack of clear dictionary guidance here as to "ordinary" meaning, how are we to know from the text alone how the parties understood their language? Again, we must examine all relevant evidence in the particular context of a given case.

2. The Technical and Term of Art Query

a. The Technical Term Exception and the Term of Art Canon

Consistent with the discussions above, the technical terms exception to the ordinary meaning canon provides that "a word or phrase in a legal instrument is not to be understood in its ordinary, everyday meaning when that word or phrase has acquired a specialized or peculiar meaning in a given context and appears in that context."[118] Again, the term of art canon provides that "if a term has acquired a technical or specialized meaning in a particular context,

113. *See* Opperman v. Heritage Mut. Ins. Co., 566 N.W.2d 487, 489, 491 (S.D. 1997) (involving such language as an actual exclusion to an exclusion from coverage where the insured buildings were "a frame office, a noncombustible shop, and a frame shop").

114. *Warehouse*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1952 (5th ed. 2011).

115. *Id.*

116. *Process*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1404 (5th ed. 2011).

117. The court in *Opperman* ruled against the insured. *See* 566 N.W.2d at 489–91.

118. *Technical-Meaning Exception*, *supra* note 103.

the term should be presumed to have that meaning if used in that context."[119]

The technical terms exception and the term of art canon, as previously phrased, contain much overlap. They markedly differ, however, in that the technical terms exception directs how words or phrases are "not to be understood," while the term of art canon provides a presumption of meaning.

As for the technical terms exception, the formulation examined here admirably refers to context. In so doing, the formulation raises contextual queries discussed in Parts I and II above. As for the term of art canon, which also admirably refers to context, its presumption of meaning of course does not necessarily determine meaning, and we are thus still left with the need for a query.

b. One Formulation of the Technical and Term of Art Query

The technical and term of art query might thus be framed as follows: *As a matter of interpretation or construction as the case may be, do these words or phrases signify a technical, specialized, or other distinctive author's or speaker's meaning, when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* Again, this query can be modified to fit specific texts. If, for example, we are speaking of a statute, we can substitute "legislature's meaning" for "author's or speaker's meaning."

3. The Grammar Query

a. The Grammar Canon

The grammar canon provides that "words in a legal instrument are to be given the meaning that proper grammar and usage would assign them."[120] A common definition of "grammar" is "the study of the classes of words, their inflections, and their functions and relations in the sentence."[121]

b. Some Difficulties with the Grammar Canon

As a matter of pragmatics[122] and epistemology of meaning, such a flat directive does not work. Since, as we have seen, parties can

119. *Term-of-Art Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019).

120. *Grammar Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019).

121. *Grammar*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/grammar (last visited Mar. 23, 2022).

122. Again, as I have written before, "pragmatics" means "the study of how language users actually use and interpret words and other signs in communication." Lloyd, *Law's "Way of Words," supra* note 37, at 225; *see also* Andries Bezuidenhout, *Semantics-Pragmatics Boundary*, *in* CONCISE ENCYCLOPEDIA OF PRAGMATICS 913, 913 (Jacob L. Mey ed., 2d ed. 2009); Jacob L.

intentionally use individual terms in ways that differ from "ordinary meaning," they can, of course, intentionally diverge in their usage of "classes of words, their inflections . . . and their functions and relations in the sentence."[123] They can also do so by error. As lawyers should know, good rhetorical usage can in fact call for such deviation. For example, good rhetoric sanctions effective uses of anastrophe ("unusual arrangement of words or clauses within a sentence, often for metrical convenience or poetic effect"), anthimeria ("functional shift, using one part of speech for another"), and hypallage ("[a]wkward or humorous changing of agreement or application of words").[124]

Although such rhetorical effects might not be typically sought in private or public law texts, one cannot rule out by directive the possibility of intentional or accidental usage of words, inflections, functions, relations, and sentences that might not comport with "proper grammar" (whatever that might mean in a given context). *A fortiori*, given the potential complexities of words, inflections, functions, and relations in sentences, one certainly cannot rule out the possibility of inadvertent deviation from "proper grammar" (whatever that might mean in a given context).

Finally, but of no less importance, reasonable minds can disagree over what proper grammar and usage provide in particular cases. *Nielsen v. Preap*,[125] for example, explored when "aliens" should be released under 8 U.S.C. § 1226(c)(2).[126] That paragraph provided:

> (2) Release
>
> *The [Secretary] may release an alien described in paragraph (1) only if* the [Secretary] decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the [Secretary] that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.[127]

Mey, *Pragmatics: Overview*, *in* CONCISE ENCYCLOPEDIA OF PRAGMATICS 786, 786 (Jacob L. Mey ed., 2d ed. 2009).

123. *See Grammar*, *supra* note 121.

124. *See* RICHARD A. LANHAM, A HANDLIST OF RHETORICAL TERMS 12, 13, 86 (2d ed. 1991).

125. 139 S. Ct. 954 (2019).

126. *See id.* at 958–61.

127. *Id.* at 964 (citing the operative statutory provision).

The nine Justices of the Court disagreed on how ordinary rules of grammar would determine who are aliens "described in paragraph (1)" of 8 U.S.C. § 1226(c).[128] That paragraph provided:

> (c) Detention of criminal aliens
>
> (1) Custody
>
> *The [Secretary] shall take into custody any alien who—*
>
> (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,
>
> (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,
>
> (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least 1 year, or
>
> (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, *when the alien is released*, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.[129]

Examining paragraph (1) to determine who constitutes aliens as described in that paragraph, Justice Alito focused on the phrase italicized above: "when the alien is released."[130] Relying on a dictionary definition, he found usage and grammar establishing "the" as "a function word . . . indicat[ing] that a following noun or noun equivalent . . . has been previously specified by context."[131] He found the preceding content fixing such a "function word" to be the preceding subparagraphs (A) through (D).[132] Thus, aliens covered by such subparagraphs were not subject to release under paragraph (2).[133]

Justice Breyer, on the other hand, argued in his dissent that as "a matter of ordinary meaning and usage," an alien described by such

---

128. *Compare id.* at 964–65 (Alito, J., for the Court), *with id.* at 976–85 (Breyer, J., dissenting).

129. *Id.* at 963–64 (Alito, J., for the Court) (emphasis added) (citing the operative statutory provision).

130. *Id.* at 964–65.

131. *Id.* at 965 (quoting MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1294 (11th ed. 2005)).

132. *Id.*

133. *Id.*

paragraph (1) is an alien described by the preceding subsections of (A) through (D) "whom the Secretary has 'take[n] into custody . . . when the alien is released' from prison."[134] Under his view of the proper grammatical structure of the two paragraphs:

> Paragraph (2) refers back to the entirety of paragraph (1). And because paragraph (2) is the *release* provision, it contemplates that the action mandated by paragraph (1)—namely, detention—has already occurred. Thus, the function of the phrase "an alien described in paragraph (1)" is not to describe who must be detained, but instead to describe who must be denied bail.[135]

Thus, again, an alien is "'described in paragraph (1)'—and therefore subject to paragraph (2)'s bar on bail hearings—only if the alien is 'take[n] into custody . . . when the alien is released.'"[136]

What should one make of such wide divergence of reasonable minds on the dictates of standard grammar and usage? Such grammar and usage (like other functions of text) are not the sole evidence of congressional or other speaker or author meaning. Ultimately, it is such meaning itself that verifies the correctness of interpretation, and one must seek all available evidence of such meaning.

c. One Formulation of the Grammar Query

Formulated as a simple directive in the manner set forth above,[137] the grammar canon thus falters for at least the reasons given in Subpart V.C.3.b. In light of such failure, one might formulate the grammar query as follows: *As a matter of interpretation or construction as the case may be, to what degree (if any) does the grammatical structure of this text help signify the author's or speaker's meaning when such grammatical structure is examined in its applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* Again, this query can be modified to fit specific texts. If, for example, we are speaking of a statute, we can substitute "legislature's meaning" for "author's or speaker's meaning."

d. Four Subqueries of the Grammar Query

For the reasons given above, one will have at least four subqueries here: Is there an intent to follow "proper grammar and

---

134. *Id.* at 978 (Breyer, J., dissenting).

135. *Id.* at 980.

136. *Id.*

137. Justice Alito's formulation of the canon addresses the intent concerns discussed above by formulating the canon as follows: "[T]he 'rules of grammar govern' statutory interpretation 'unless they contradict legislative intent or purpose.'" *Id.* at 965 (quoting SCALIA & GARNER, *supra* note 4, at 140).

usage" (whatever that might mean)? Is there an intent to deviate from "proper grammar and usage" (whatever that might mean)? Is there an unintended deviation of "proper grammar and usage" (whatever that might mean)? Are there multiple answers to what counts as "proper grammar and usage" (whatever that might mean) in such a case?

4. The Punctuation Query

a. The Punctuation Canon

The punctuation canon provides that "the punctuation in a legal instrument is a permissible indicator of meaning."[138] Since anything can potentially serve as the signifier of something else,[139] this formulation of the canon is hardly objectionable in itself. That said, however, this canon gives little actual direction, since it merely reaffirms the foregoing semiotic point.[140]

Of course, one can hardly expect more when focusing on punctuation in itself, since punctuation itself is not meaning but is instead a potential signifier of meaning. To find any meaning signified, one must ask how the speaker or author meant to use the purported punctuation to signify meaning. This, of course, leads us back to the need for queries.

b. The Punctuation Query

Thus, the punctuation query might thus be phrased: *As a matter of interpretation or construction as the case may be, to what degree (if any) does this text's punctuation (or lack thereof) help signify the author's or speaker's meaning? In light of our answer, how should we interpret and construe such meaning?* Again, this query can be modified to fit specific texts. And again, if we are speaking of a statute, for example, we can substitute "legislature's meaning" for "author's or speaker's meaning."

---

138. *Punctuation Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019). This canon reflects a change from older English practice where drafters of statutes omitted punctuation, and punctuation thus was "not considered part of the law and was not relevant for statutory interpretation." *See* POPKIN, *supra* note 18, at 220–21.

139. As I have noted elsewhere, "[w]hen analyzing signifiers, we must remember that they can include such a wide array as a 'concrete object,' 'an abstract entity,' 'an idea or thought,' 'a perceptible [object],' a 'physical event,' or an 'imaginable [object].'" Lloyd, *How to Do Things*, *supra* note 25, at 867.

140. One can compare other somewhat more specific formulations: "Congress is presumed to follow accepted punctuation standards, so that placements of commas and other punctuation are assumed to be meaningful." ESKRIDGE, *supra* note 5, at 410 (citations omitted).

c. Four Subqueries of the Punctuation Query

Similar to the grammar query, one will have at least four subqueries here: Is there an intent to follow "standard punctuation" (whatever that might mean)? Is there an intent to deviate from "standard punctuation" (whatever that might mean)? Is there an unintended deviation from "standard punctuation" (whatever that might mean)? Are there multiple answers to what counts as "standard punctuation" (whatever that might mean) in such a case? In answering these queries, one would do well to remember that writers can disagree as to proper punctuation,[141] and errors of punctuation "are still among the most [common] drafting mistakes," therefore making them "less reliable guides to meaning."[142]

d. *Live Nation Worldwide, Inc. v. Secura Insurance* and the Risks of a Grammar or Punctuation Query

For example, the court in *Live Nation Worldwide, Inc. v. Secura Insurance*[143] relied at least in part upon a purported punctuation rule of general application providing that items "separated by semicolons are items in a list, each of which is linked to the original phrase."[144] The case centered upon a disputed insurance provision that linked four types of coverage by semicolons, with a fifth provision linked with a semicolon followed by "and."[145] The second provision provided for certain commercial general liability insurance, and the fifth provision provided that "coverage for the additional insured shall apply on a primary basis irrespective of any other insurance, whether collectible or not."[146] The provisions were thus set out in the following form: (i) First type of coverage; (ii) Second type of coverage for certain commercial general liability insurance; (iii) Third type of coverage; (iv) Fourth type of coverage; and (v) Provision that stated, "[c]overage for the additional insured shall apply on a primary basis irrespective of any other insurance, whether collectible or not."[147] The court held that because it would go "against basic *grammar* principles to interpret subsection (v) to modify (iv) and nothing else," the "plain

141. *See, e.g.*, BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE 3–4 (4th ed. 2018) (discussing the serial comma (or "Oxford comma") and addressing how "some writers treat[] [it] as optional," how "it's always included in formal writing and often omitted in informal writing," and how "books and most magazines" use it while "most newspapers rarely do"). See also *O'Connor v. Oakhurst Dairy*, 851 F.3d 69, 70 (1st Cir. 2017), in the discussion below involving the absence of a serial comma and beginning with this clever line: "For want of a comma, we have this case."

142. POPKIN, *supra* note 18, at 221.

143. 423 F. Supp. 3d 383 (W.D. Ky. 2019).

144. *Id.* at 390.

145. *Id.* at 388–89.

146. *Id.*

147. *Id.*

and unambiguous" meaning of the contract applied section (v) to section (ii) and thus required that general commercial liability insurance had to be provided on the primary basis noted above.[148]

Given, however, both the commonness of punctuation errors[149] and possibilities of disagreement as to proper punctuation in given cases, this language hardly seems "plain and unambiguous." The case presented a nonparallel sequence of phrases linked by semicolons where the first four sections addressed types of insurance, while the last addressed whether coverage should be on a primary basis. A well-drafted contract would, of course, have expressly provided that all four types of coverage were to be on the primary basis noted above—were that indeed the parties' intent. Instead, we have a document that does not provide such clarity in its use of a string of unparallel clauses that do not expressly provide how far back the last clause reaches. (As previously noted, the canons overlap, and this problem also involves matters addressed by the rule of the last antecedent briefly discussed in Appendix A.) Recognizing the errors and disagreements that are possible with punctuation, we should thus not be asking what *semicolons* mean in themselves but whether the *parties* in their full particular context meant the last semicolon to link (v) only to (iv), or whether they meant to link (v) to all four preceding sections.[150]

e. *O'Connor v. Oakhurst Dairy* and the Grammar Query

Taking a broader look than the court in *Live Nation*, the court in *O'Connor v. Oakhurst Dairy*[151] refused to rely solely on punctuation (or its absence) to determine whether overtime wage protection applied to a group of workers. The relevant language provided that overtime law protection did not apply to workers involved in:

> The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:
>
> (1) Agricultural produce;
>
> (2) Meat and fish products; and

148. *Id.* at 390 (emphasis added).

149. POPKIN, *supra* note 18, at 221.

150. *See* RESTATEMENT (SECOND) OF CONTS. § 201(1) (AM. LAW INST. 1981) ("Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning."); *id.* § 214(c) ("Agreements and negotiations prior to or contemporaneous with the adoption of a writing are admissible in evidence to establish the meaning of the writing, whether or not integrated.").

151. 851 F.3d 69 (1st Cir. 2017).

(3) Perishable foods.[152]

Delivery drivers claimed that the absence of a serial comma in "packing for shipment or distribution" meant that the phrase referred to just the activity of packing so that drivers were not excluded from overtime protection.[153]

In its opening line, the court cleverly noted (with what I would consider a correct grammatical use of a comma) that "[f]or want of a comma, we have this case."[154] Rather than purporting to settle the issue by punctuation or text alone, the court properly looked at the legislative history but found it not to be "decisive either way."[155] The court then turned to a default state "rule of construction," which provided that "ambiguous provisions in the state's wage and hour laws . . . 'should be liberally construed to further the beneficent purposes for which they are enacted.'"[156] The court then turned to the legislative purpose reflected in the opening of the relevant subchapter containing the exemption: "It is the declared public policy of the State of Maine that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered."[157] Given such a legislative-specific policy as shown by the above language of purpose and given such a continuing liberal construction intent for ambiguous wage and hour laws, the court concluded that drivers should not be excluded from overtime protection.[158]

f. *Banco Espírito Santo S.A. v. Concessionária Do Rodoanel Oeste S.A.*

Of course, as a general rule, courts should not swing from giving improper weight to punctuation to giving no weight at all. Thus, one would not want to suggest, as does *Banco Espírito Santo S.A. v. Concessionária Do Rodoanel Oeste S.A.*,[159] that "in a contract containing punctuation marks, the words and not the punctuation guide us in its interpretation," or that punctuation "is always

152. *Id.* at 71.
153. *Id.*
154. *Id.* at 70.
155. *Id.* at 72–79.
156. *Id.* at 79 (quoting Dir. of the Bureau of Lab. Standards v. Cormier, 527 A.2d 1297, 1300 (Me. 1987)). States can, of course, mandate rules of construction. *See, e.g.*, MINN. STAT. § 645.08 (1986). A state rule requiring liberal construction on its face indicates an ongoing desire for liberal construction. Thus, a ruling using a mandated liberal construction implements legislative intent, even if specific legislative history or other evidence is lacking on the matter at hand.
157. *O'Connor*, 851 F.3d at 79 (quoting ME. REV. STAT. ANN. tit. 26 § 661 (1959)).
158. *See id.*
159. 100 A.D.3d 100 (N.Y. App. Div. 2012).

subordinate to the text and is never allowed to control its meaning."[160] The canonical queries would review all available evidence of meaning of signifiers used in a particular context.

5. The Further Meaning Query

Since we do not always use terms to convey their "ordinary meanings" as discussed in Subpart V.C.1 above, we also need the following suggested additional meaning query: *As a matter of interpretation or construction as the case may be, do these words or phrases signify an author's or speaker's meaning beyond their literal meanings, when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?* For example, we can return to the famous Gricean example discussed in Subpart V.C.1.a above, where a philosophy professor gives a student a bad recommendation by using these words in their "ordinary meaning": "Dear Sir, Mr. X's command of English is excellent, and his attendance at tutorials has been regular."[161]

6. The Irony/Nonliteral Meaning Query

Inquiry into meaning must of course recognize that we do not always mean for our words to be taken literally. Thus, one might tell another "you truly are a great person" where the context indicates an actual meaning of just the opposite. This query differs from the further meaning query. For example, as discussed in Subpart V.C.1.a, the philosophy professor asked to write a recommendation letter for a philosophy position may literally mean "Dear Sir, Mr. X's command of a CAT Scanner is excellent" while also conveying the further meaning of a nonrecommendation for the philosophy position.

One might therefore formulate the following irony/nonliteral meaning query: *As a matter of interpretation or construction as the case may be, do these words or phrases signify an author's or speaker's meaning that is ironic or nonliteral, when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

160. *Id.* at 109.

161. *See* GRICE, supra note 106, at 33 (providing the quote of the professor's "recommendation"). Such further meaning includes implicatures. *See* CRUSE, *supra* note 28, at 413 ("[I]mplicatures in general stand in opposition to 'what is said', as components of a more inclusive 'what is meant'".). For example, if I ask, "Am I in time for supper?" and if I am answered, "We've cleared the table," there is an implicature that I am too late. *See id.* at 415.

7. More Queries to Come

I regret that space limitations require that I cease explorations of the queries here. I refer the reader to Appendix A for a preview of remaining queries to be explored in future articles in this series on the canonical queries.

CONCLUSION

A good summary of the need to replace the canons of construction with canonical queries expressly tied to context and other relevant intrinsic and extrinsic evidence can be found in the interaction of the plain meaning, ordinary meaning, and additional meaning queries. To take a nonlegal example of such interaction, Section 7.7 of the *Analects* would quote Confucius as claiming: "I have never denied instruction to anyone who, of their own accord, offered up as little as a bundle of silk or a bit of cured meat."[162]

Although the statement may at first seem odd, there seems no indication on the face of things that words are used in "nonordinary" ways or that the sentence cannot be read plainly. That said, however, what plain and ordinary meaning do we find? Does Confucius "plainly" mean that he would teach people who on their own initiative offered him such things as bundles of silk or cured meat? Or does Confucius "plainly" mean that he would not teach for free but would take small fees ("a bundle of silk or a bit of cured meat"), if he did not have to insist upon a fee ("of their own accord")? With at least two "plain" meaning possibilities, "plain" meaning is not plain.[163]

Were this not troubling enough, either such "plain" conclusion would likely be wrong or incomplete upon further inquiry. To avoid such error, we should apply the further meaning query: Could the words mean more than their "ordinary" or "plain" meaning might suggest? Indeed, they could. Commentators on this passage suggest at least two likely further meanings. In ancient China, men could bind their hair at the age of fifteen and could do so with silk or with strips that could also be translated as "cured strips of meat."[164] On

---

162. CONFUCIUS, ANALECTS 66 (Edward Slingerland trans., 2003).

163. I have ignored further canons that might also fire off here. For example, might *noscitur a sociis* (discussed in Appendix A) lead some to seek the common category of "bundles of silk" and "a bit of cured meat" when seeking what can count as the "little" that is "offered up"? Might *expressio unius* (also discussed in Appendix A) lead some to think that instruction requires some gift since gift-free instruction is not mentioned?

164. *See* CONFUCIUS, *supra* note 162, at 66. Such variations in translatability also raise transmission queries noted in Appendix A as well as queries of applicable text and proper transformation of the original utterance from the Chinese. To underscore these further concerns, Waley translates the text as follows: "From the very poorest upwards—beginning with the man who could bring no better present than a bundle of dried flesh—none has ever come to me without receiving instruction." THE ANALECTS OF CONFUCIUS 124 (Arthur Waley

this reading, perhaps Confucius means he would accept as a student any person over fifteen years of age.[165] Another reading would note the common practice of "ritually-dictated offerings made by a student seeking instruction" at the time as well as the reference to offering up in Section 7.7.[166] On this perhaps more likely reading, "Confucius' door was open to anyone who came willingly and in a ritually correct manner," and Confucius, therefore, "did not discriminate on the basis of social status or wealth."[167] Simply using canons of ordinary and plain meaning would have thus likely missed the real and full meaning of Section 7.7 of the *Analects*.

In light of this ancient example, and for all the other reasons set forth in this Article and in Appendix A, let's therefore recast the canons as queries along the lines set out in this Article and in Appendix A. Let's end the canons' misfire, crossfire, and indiscriminate fire. Let's take any mettle they may have and reforge it into canonical queries along the lines suggested above in this Article and below in Appendix A.

---

trans., 1938) (internal citations omitted). Again, to the extent a textualist might think he can take the text presented to him without further inquiry as to the text itself, the textualist risks serious error.

165. *See* CONFUCIUS, *supra* note 162, at 66.

166. *See id.*

167. *See id.*

APPENDIX A:
ANNOTATED OUTLINE OF A NUMBER OF CANONICAL QUERIES

A. First Type of Canonical Queries: Transmitted/ Presented Text.[168]

1. First Group: The Applicable Text Query and Its Subqueries.

a. The Applicable Text Query (Addressed in Subpart V.A.1).

b. Subqueries of the Applicable Text Query (Addressed in Subpart V.A.4).

2. Second Group: Initial Canonical Queries and Subqueries of Textual Clarity.

a. The Plain Meaning Query (Addressed in Subpart V.B.1).

b. The Ambiguity Subquery (Addressed in Subpart V.B.2).

c. The Vagueness Subquery (Addressed in Subpart V.B.3).

d. The Indeterminacy Subquery (Addressed in Subpart V.B.4).

3. Third Group: Canonical Queries of Grammar, Syntax, and Other Rules of Language.

a. The Ordinary Meaning Query (Addressed in Subpart V.C.1).

b. The Technical and Term of Art Query (Addressed in Subpart V.C.2).

c. The Grammar Query (Addressed in Subpart V.C.3).

d. The Punctuation Query (Addressed in Subpart V.C.4).

e. The Further Meaning Query (Addressed in Subpart V.C.5).

f. The Irony/Nonliteral Meaning Query (Addressed in Subpart V.C.6).[169]

---

168. This type involves Cruse's communication stages six through nine discussed in note 28 above. *See* CRUSE, *supra* note 28, at 5. Such stages should also look back at Cruse's stages one through five when determining speaker meaning. *See id.*

169. Since I terminate detailed exploration of the queries at this point in the body of this Article, I offer in the notes that follow previews of further explorations to come.

4. Fourth Group: Canonical Queries of Signifier Scope.

a. The *Ejusdem Generis* Query.[170]

b. The *Noscitur a Sociis* Query.[171]

c. The *Expressio Unius* Query.[172]

d. The Antecedent/Subsequent Query.[173]

---

170. *See Ejusdem Generis*, *supra* note 17 ("[W]hen a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."). Thus, using the canon, "the phrase *horses, cattle, sheep, pigs, goats, or any other farm animals*, the general language *or any other farm animals*—despite its seeming breadth—would probably be held to include only four-legged, hoofed mammals typically found farms, and thus would exclude chickens." *Id.* This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, does a general word or phrase preceded by a list of more specific words or phrases signify that the author's or speaker's meaning of the general word or phrase is limited by a common category shared by the author's or speaker's meaning of the preceding list of more specific words or phrases, when all these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

171. *See Noscitur a Sociis*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[T]he meaning of an unclear word or phrase, [especially] one in a list, should be determined by the words immediately surrounding it."). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, do these words or phrases in proximity to other words or phrases signify the author's or speaker's intent to modify or limit such other words and phrases (and if so what is the extent of such modification or limitation), when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

172. *See Expressio Unius Est Exclusio Alterius*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[T]o express or include one thing implies the exclusion of the other, or of the alternative. For example, the rule that 'each citizen is entitled to vote' implies that noncitizens are not entitled to vote."). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, does the expression or inclusion of words or phrases here signify the author's or speaker's intent to exclude something else, when such words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

173. *See Rule of the Last Antecedent*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[Q]ualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire writing."). This canon should be replaced with a workable query using the approaches taken in this Article as

e. The Anaphora Query.[174]

5. Fifth Group: Canonical Queries of Signifier Fit and Coherence.

a. The Whole Text Query.[175]

b. The No Surplusage Query.[176]

c. The Absurdity Query.[177]

---

models. For example: *As a matter of interpretation or construction as the case may be, do these words or phrases signify the author's or speaker's intent to qualify or modify antecedent or subsequent meaning (and if so what is the extent of such qualification or modification), when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

174. Anaphora is "use of a grammatical substitute . . . to refer to the denotation of a preceding word or group of words" and thus involves "the relation between a grammatical substitute and its antecedent." *Anaphora*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/anaphora (last visited Mar. 23, 2022). One might phrase the query: *As a matter of interpretation or construction as the case may be, did the author or speaker intend for these words or phrases (the "words or phrases in question") to serve as a grammatical substitute for any preceding word(s) or phrase(s), when the words or phrases in question are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

175. *See Whole-Text Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[A] legal text . . . must be construed as a whole."). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, how does the author's or speaker's meaning of this whole text affect the author's or speaker's meaning of these particular words or phrases used in such whole text, when these particular words or phrases are also examined in their other applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

176. *See Surplusage Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[I]f possible, every word and every provision in a legal instrument is to be given effect."). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, can some words or phrases in this text be ignored without affecting the author's or speaker's meaning, when this text and such words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

177. *See Absurdity Doctrine*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[A] provision in a legal instrument may be either disregarded or judicially corrected as an error ([especially] when the correction is textually simple) if failing to do so would result in a disposition that no reasonable person could approve."). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction*

d. The Scrivener's Error Query.[178]

e. The Exercise of Power Query.[179]

f. The Consistent Meaning Query.[180]

g. The Fit with the Surrounding Text Query.[181]

---

as the case may be, (i) is there a poor fit between the author's or speaker's meaning and the language used here or (ii) does the author's or speaker's meaning have an absurd or unlawful impact here, when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?

178. *See Doctrine of Scrivener's Error*, BLACK'S LAW DICTIONARY (11th ed. 2019) (permitting "a typographical error in a document to be reformed by parol evidence, if the evidence is precise, clear, and convincing."). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, do these words or phrases involve error causing them to fail to signify the author's or speaker's meaning, when these words or phrases are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

179. *See Contra Proferentem*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[I]n the interpretation of documents, ambiguities are to be construed unfavorably to the drafter."). Rationales for the canon include: "Where one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party." *See* RESTATEMENT (SECOND) CONTS. § 206 cmt. a (AM. LAW INST. 1981). This canon should be replaced with a workable query using the approaches taken in this Article as models. For example: *As a matter of interpretation or construction as the case may be, has a party to a document or instrument exercised power in a way (i) that requires special scrutiny to assure the fit of this text (or its parts) with author or speaker meaning or (ii) that requires construction to remedy any unlawful or unfair advantage resulting from such exercise of power, when such exercise of power and such text (or its parts) are examined in their applicable context(s) and in light of the other available evidence? Given the answer, how should one proceed with interpretation and construction?*

180. *See Presumption of Consistent Usage*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The doctrine that a word or phrase is presumed to bear the same meaning throughout a text, [especially] a statute, unless a material variation in terms suggests a variation in meaning."). Of course, one can have such doubts about the canon as (i) whether this accords with common linguistic practice or with the practice of the specific drafter, (ii) whether context changes the meaning of the same word or phrase in different parts of the text, and (iii) whether a draft with multiple authors might have involved the different authors using words differently. This canon should thus be replaced with a workable query using the approaches taken in this Article as models. For the sake of space, I shall cease at this point in Appendix A to include proposed query language. Again, I hope to continue with further exploration of the queries in a series of future articles, building from this Appendix.

181. *See, e.g.*, ESKRIDGE, *supra* note 5, at 411 (setting out the "Whole act rule" that "Each statutory provision should be read by reference to the whole act and

h. The *In Pari Materia* Query.[182]

i. The Particular vs. General Query.[183]

j. The Ellipsis Query.[184]

k. The Conjunction Query.[185]

---

the statutory scheme"). This canon rightly reflects the importance of context but should still be replaced with a workable query using the approaches taken in this Article as models.

182. *See In Pari Materia*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("[S]tatutes that [are on or relate to the same subject matter] may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject."). This canon rightly reflects the importance of context but should still be replaced with a workable query using the approaches taken in this Article as models.

183. *See, e.g.*, ESKRIDGE, *supra* note 5, at 414 ("Specific provisions targeting a particular issue apply instead of provisions more generally covering the issue."). One can have such doubts about the canon as (i) whether the specific provisions must be governed by the context of the more general provisions to determine the actual meaning, and (ii) whether particular provisions in certain cases are less well drafted than the general terms and thus less indicative of speaker meaning. This canon should be replaced with a workable query using the approaches taken in this Article as models.

184. *See Ellipsis*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/ellipsis (last visited Mar. 23, 2022) ("[T]he omission of one or more words that are obviously understood but that must be supplied to make a construction grammatically complete."). Thus, an apple contract simply referring to delivery of "ten bushels" could be an ellipsis for "ten bushels of apples." Similarly, a statute providing for insurance premium subsidies for coverage "enrolled in through an Exchange established by the State" might involve ellipsis rather than omission when not expressly referring to federal Exchanges also permitted to set up Exchanges for states failing to do so. *See* Lloyd, *Law's "Way of Words," supra* note 37, at 224. An ellipsis query is thus required in such cases.

185. Even if a conjunction of two terms, for example, is taken to mean that both terms must apply, *see Conjunction*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/conjunction (last visited Mar. 23, 2022), questions can nonetheless arise as to the extent of such conjunction. For example, "Emory and Sykes owe Perry $100.00" could mean joint liability, several liability, or joint and several liability. A conjunction query would thus be required. Additionally, for example, the form "A and B" and "B and A" may or may not be equivalent, even though pure conjunction theory might suggest such equivalence. Thus, "Stop and smile" may or may not be equivalent to "Smile and stop," if a sequence is also intended and the phrases are thus "semantically incomplete." *See* Robyn Carston, *Legal Texts and Canons of Construction: A View from Current Pragmatic Theory*, *in* 15 LAW AND LANGUAGE 8, 11 (Michael Freeman & Fiona Smith eds., 2013) (discussing "Pay and display!" vs. "Display and pay!"). Thus, again, a conjunction query is required in such cases.

l. The Disjunction Query.[186]

m. The General Query of Severability.[187]

n. The Relevance Query.[188]

o. The Presupposition Query.[189]

p. The Preconception Query.[190]

---

186. A disjunction of two terms, for example, can be either inclusive (one or both terms apply) or exclusive (only one applies). *Compare Inclusive Disjunction*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/inclusive%20disjunction (last visited Mar. 23, 2022) ("[A] complex sentence in logic that is true when either or both of its constituent propositions are true."), *with Exclusive Disjunction*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/exclusive%20disjunction (last visited Mar. 23, 2022) ("[A] compound proposition in logic that is true when one and only one of its constituent elements is true."). Disjunctions can also be qualified in other ways. For example, does "Complete this form prior to your physical return to campus or no later than August 25" require completion by the earlier of those two dates or by August 25? A disjunctive query is thus required in such cases.

187. One looks at the intent of the legislature to determine whether legislative provisions are severable. *See* 82 C.J.S. *Statutes* § 113 (2021) ("[T]he ultimate question on severability is the intent of the legislature."). Thus, in the case of an unconstitutional provision, "[t]he test for severability is whether the unconstitutional portions of the statute are so interrelated and connected or entwined with the rest of the statute that they cannot be separated without destroying the intention manifested by the legislature in passing the act." *Id.* (footnotes omitted). In the case of contracts, one similarly looks to the intention of the parties. 17A C.J.S. *Contracts* § 460 (2021). Similar to the statutory test, one also looks at the divisibility or separability of the contract. *See id.* § 461 ("A 'divisible contract' is in legal effect, independent agreements about different subjects though made at the same time. The divisibility of subject matter is consistent with and indicative of a severable contract, although it is not conclusive on the matter."). A severability query is thus required in such cases.

188. *See Relevant*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/relevance (last visited Mar. 23, 2022) (defining "relevant" as "having significant and demonstrable bearing on the matter at hand"). Thus, again, a contract simply referring to delivery of "ten bushels" would hardly seem relevant to the transaction if "ten bushels" were not taken to mean "ten bushels of apples." Thus, we would follow Grice's maxim: "Be relevant." *See* GRICE, *supra* note 106, at 27, and a relevance query is therefore required in such cases.

189. *See Presupposition*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/presupposition (last visited Mar. 23, 2022) (defining presupposition as "to suppose beforehand" or "to require as an antecedent in logic or fact"). This query reminds us that coherent webs of meaning can require unstated meaning where presupposed. For example, "I'm no longer a licensed driver" also means that I was once a licensed driver even though that is not explicitly stated. Thus, a presupposition query is required in such cases.

190. *See Prejudice*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/prejudice (last visited Mar. 23, 2022) (defining "prejudice" as

6. Sixth Group: Canonical Queries of Signifier Context.

a. The Linguistic Context Query.[191]

b. The Physical Context Query.[192]

c. The Cognitive Context Query.[193]

d. The Type of Discourse Context Query.[194]

e. The Other Relevant Contexts Query.[195]

"preconceived judgment or opinion") and LAWN & KEANE, *supra* note 48, at 96 (noting Gadamer's point that "All judgements are conditioned by prejudgements" and "without prejudgements there can be no judgements"). This query cautions us to evaluate preconceptions that might blind us to the substance and coherence of linguistic or legal meaning in particular cases. This query could also fit under the contextual queries to the extent it reminds us that we bring our own contexts to interpretation and construction.

191. *See* CRUSE, *supra* note 28, at 121 (addressing linguistic context).

192. *See id.* (addressing physical context).

193. *See id.* (addressing cognitive context).

194. *See id.* (addressing type of discourse context).

195. *See, e.g.*, *Context Rule*, BLACK'S LAW DICTIONARY (11th ed. 2019) (referencing the following types of context in the case of a contract: "(1) the subject matter and purpose of the contract, (2) the circumstances surrounding the making of the contract, (3) the subsequent conduct of the parties to the contract, (4) the reasonableness of the parties' respective interpretations, (5) statements made by the parties in preliminary negotiations, (6) usages of trade, and (7) the course of dealing between the parties").

---

196. This type involves Cruse's communication stage five discussed in note 28 above. *See also* CRUSE, *supra* note 28, at 5.

197. *See id.* at 9. Signifiers can fade or become distorted through transmission. For example, a lawyer may misunderstand a client's oral or written instructions and can embody such error in communicating a client's position (a case of distortion). Or a lawyer may only grasp part of a client's oral or written instructions and can embody such error in communicating a client's position (a case of fading). Thus, if we seek the client's meaning, a query of distortion or fading of signifiers is required in such cases. Remembering and acting upon such a query can be critical, for example, to resolving negotiation "impasses" that occur because of such transmission issues.

198. Given that language may be "roughly 50 per cent [sic] redundant," transmission errors of written text can theoretically require a great deal of "physical degradation to render [such text] unidentifiable." *See id.* That said, however, loss of just one page of a lengthy contract can, of course, create great difficulties depending upon the information lost. The good lawyer thus examines the completeness of transmitted text. The transmission queries also apply to the determination of applicable text discussed in Subpart V.A.1. The possibility of loss through transmission should thus also be considered when determining whether one has been presented with all of the applicable text.

199. This type involves Cruse's communication stages two through four discussed in note 28 above. *See also* CRUSE, *supra* note 28, at 5.

200. The reference component of meaning is that to which the speaker refers (the referent) such as the planet Venus when a speaker's meaning involves either the "Morning Star" or "Evening Star." *See* WINFRIED NÖTH, HANDBOOK OF SEMIOTICS 93 (1985) (discussing Frege's insight here); *see also Referent*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/referent (last visited Mar. 23, 2022) ("[T]he thing that a symbol (such as a word or sign) stands for."). Failure to grasp a speaker's referent risks focusing interpretation and construction upon the wrong object, and the reference query seeks to avoid such grave error where other queries may have insufficiently focused on reference. In this regard, I have suggested expanding the legal writing mnemonic "RIAC" to

"RIRAC" (where the first "R" stands for "Reference") as a fundamental checklist. *See* Harold Anthony Lloyd, *Legal Thought: Forms, Frames, Choices, and Aims*, 41 VT. L. REV. 1, 13–15 (2016).

201. The sense component of the meaning of a notion or thing is the actual and possibly-conceivable ways in which that notion or thing unfolds or can unfold in objective and subjective experience. *See* Lloyd, *Making Good Sense*, *supra* note 105, at 204–07. Thus, again, "Morning Star" and "Evening Star" have different senses since these two "stars" unfold in different ways (actually and possibly) in objective and subjective experience though both refer to the planet Venus. *See id. See also* NÖTH, *supra* note 200, at 93. Parsing between "sense" and "reference" in "meaning" thus allows us to grasp how different senses can nonetheless have the same object or referent.

202. For purposes of this Article, we can take "concept" to mean "a mental construct that stands in a relation of correspondence to a coherent category." *See* CRUSE, *supra* note 28, at 51. In distinction, I take "conception" to mean particular aspects of concepts used, particular matters covered by concepts used, and particular applications of concepts used. For example, when debating and voting upon a bill, all legislators may have the same concept of "key" as an instrument whose purpose is to open and fasten locks. They may also, however, have different conceptions of "key" in mind when they debate and vote. That is, legislators may happen to think of different items covered by that same concept they all embrace. For example, half the legislators may have a *conception* of keys as skeleton keys while the other half may have a *conception* of keys as instruments made to turn tumbler locks, yet they can all still share the same concept of a key as an instrument whose purpose is to open and fasten locks.

203. An utterance is "a piece of language produced on a particular occasion with a particular intent." CRUSE, *supra* note 28, at 25. This query is concerned with the fit between a speaker's meaning and the language a speaker uses with the intent to express such meaning. Thus, an English and French speaker may mentally translate the same speaker meaning as "I'm cold" and "J'ai froid" respectively before selecting the public signifiers used to transmit such meaning (the subject of the next query). Error can occur at this level as when the English speaker mentally translates the meaning into "Je suis froid." When the post transmission canonical queries of transmitted/presented text seek speaker meaning, they need to be aware of this translation process and its potential for error. Translation concerns can occur at other levels as well, such as translations from the Hebrew of the Ten Commandments discussed in Subpart V.A.3.b above.

204. Speakers can, of course, also err when choosing their transmittable signifiers. Thus, the English and French speakers above might type "I'm clod" and "J'ia foird" and transmit the same. When the post transmission canonical queries of transmitted/presented text seek speaker meaning, they need to recognize potential for error in this process.

D. Fourth Type of Canonical Queries: Purpose and Motive.[205]

1. The Linguistic Purpose(s) of the Speaker(s) Query.[206]

2. The Motive(s) of the Speaker(s) Query.[207]

205. This type involves Cruse's communication stage one discussed in note 28. *See* CRUSE, *supra* note 28, at 5.

206. By a speaker's linguistic "purpose" or drafter's linguistic "purpose," I mean the goal of the speaker's speech act in itself or the drafter's speech act in itself. *See Purpose*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "purpose" as "[a]n objective, goal, or end"). For example, the purpose of a contract drafted for the sale of goods is the sale of goods.

207. By a speaker's or drafter's motive, I mean the desires which lead the speaker or drafter to act. *See Motive*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/motive (last visited Mar. 23, 2022) ("[S]omething (such as a need or desire) that causes a person to act."). Thus, the motive for a contract for the sale of goods can differ from the purpose (the sale of goods). A buyer might be motivated, for example, by a desire to harm competitors by taking the sold goods off the market. In construction, one must thus distinguish between lawful/unlawful purpose and lawful/unlawful motive.

---

208. To the extent speaker meaning is sought, queries under this type involve Cruse's communication stages six through nine discussed in note 28. *See also* CRUSE, *supra* note 28, at 5. When seeking such speaker meaning, queries under this type should also look back at Cruse's stages one through five. *See id.*

209. This query recognizes that a word as signifier may shift over time to signify a different signified. Thus, Scalia and Garner note that Queen Anne may have referred to Saint Paul's Cathedral as "awful, artificial, and amusing" while meaning by those terms "awe-inspiring, highly-artistic, and thought-provoking." SCALIA & GARNER, *supra* note 4, at 78. This sort of change over time is what the signifier drift query explores. This is query is not to be confused with queries of temporal change in the signified (covered by the remaining canonical queries of time). For example, "marriage" can continue to signify "the state of being united as spouses in a consensual and contractual relationship recognized by law" while the *signified* evolves to include same-sex as well as opposite-sex spouses. *See Marriage*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/marriage (last visited Mar. 23, 2022); *Marriage*, BLACK'S LAW DICTIONARY (11th ed. 2019).

210. I use "referent" here to mean that to which a signifier refers. This query recognizes that common or "ordinary" meanings can stay constant while their referents shift. For example, a common or ordinary usage of "planet" might mean "any of the large bodies that revolve around the sun in the solar system" whose referents could thus exclude Uranus and Neptune until technology allows their discovery. *See Planet*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/planet (last visited Mar. 23, 2022). As "ordinary" meaning shifts, referents can also shift accordingly. *See infra* note 211 (discussing referent shift flowing from a change in the meaning of "planet"). For a useful table of various philosophers' differing terminologies as to the "dimension of sense" and the "dimension of reference," see NÖTH, *supra* note 200, at 94. For further reading relevant to reference, see also *Reference*, OXFORD DICTIONARY OF PHILOSOPHY (3d ed. 2016); *Extension/Intention*, OXFORD DICTIONARY OF PHILOSOPHY (3d ed. 2016);

Denotation, PENGUIN DICTIONARY OF PHILOSOPHY (2d ed. 2005); THE LINGUISTICS ENCYCLOPEDIA 331–32 (Kirsten Malmkjaer ed., 2004); ROY T. COOK, A DICTIONARY OF PHILOSOPHICAL LOGIC 46 (2009).

211. This query recognizes that a speaker may or may not intend to recognize commonly-recognized reference shifts over time. For example, if a person creates a trust for the "study of the planets" when only the planets from Mercury through Saturn were known, that person, as a matter of *reference*, might have intended just the study of those planets. Of course, where law or lawful policy otherwise requires, speakers may not get their intended referents as a matter of law. Thus, the temporal queries of speaker meaning can involve construction as well as interpretation.

212. This query recognizes that "ordinary" meaning can involve sense change over time. For example, common or ordinary usage might shift to require the following of a planet: it must be "in orbit around the Sun" and it must have "sufficient mass to assume hydrostatic equilibrium (a nearly round shape)" and it must have "'cleared the neighborhood' around its orbit." Libr. of Cong., *Why Is Pluto No Longer a Planet?* (Nov. 11, 2019), https://www.loc.gov/everyday-mysteries/item/why-is-pluto-no-longer-a-planet/#:~:text=In%20August%202006%20the%20International,will%20be%20designated%20as%20planets. Not only would the sense of "planet" change under this definition but "planet" would no longer refer to Pluto because Pluto would not meet the third "clearing" requirement. *Id.*

213. This query recognizes that a speaker may or may not intend to follow shifts in "ordinary" meaning over time. For example, if a person creates a trust to study "planets" in the sense of "any of the large bodies that revolve around the sun in the solar system," that person may well intend a broader sense of "planet" than would be allowed by a definition requiring it to have "'cleared the neighborhood' around its orbit." That person's *sense* of planet could thus continue to include Pluto regardless of changes to the "ordinary" sense of "planet." That said, however, there are limits on the ability of speakers to limit sense to particular points in time. Sense unfolds through experience as discussed *supra* note 201, and, to continue with the example above, the sense of "any of the large bodies that revolve around the sun in the solar system," by definition, plays out in experience as we, for example, have more information over time about such large bodies, the sun around which they revolve, and the solar system containing them. Thus, a speaker's fixation on such an older sense of planet does not mean that such an older sense of planet does not itself continue to unfold through time. *See also* Lloyd, *How to Do Things*, *supra* note 25, at 861, 870–71, 925–30 (discussing the unfolding of sense through time). This query thus parses between fixation upon a concept (which is possible) and fixation of a concept's sense (which is not possible to the extent such fixation denies concepts unfold through time). One must also take care here not to confuse the speaker's conception of planet at any given time with his concept of planet whose sense, by definition, unfolds through time.

214. To the extent speaker meaning is sought, queries under this type involve Cruse's communication stages six through nine discussed in note 26 above. *See also* CRUSE, *supra* note 28, at 5. When seeking such speaker meaning, queries under this type should also look back at Cruse's stages one through five. *See id.* To save space, I have not listed all queries that fall under this type. For other possibilities, see, e.g., POPKIN, *supra* note 18, at 17.

215. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation not be *interpreted* in ways that render it unconstitutional. *See also Constitutional-Doubt Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The doctrine that a statute should be interpreted in a way that avoids placing its constitutionality in doubt.").

216. In addition to acts of construction, this query recognizes that legislatures may intend that their legislation be *interpreted* as severable to permit the striking of any provisions found unconstitutional. *See* ESKRIDGE, *supra* note 5, at 427 (noting a "[s]trong presumption favoring severability of unconstitutional provisions").

217. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* in ways consistent with federalism. *See also* POPKIN, *supra* note 18, at 95–96 ("The federalism canon favors interpretation of federal statutes so as not to burden the states or interfere with state policy." Uses include preventing inferences "that a federal statute overrides State sovereign immunity in federal courts," preventing inferences of causes of action against states, and preventing inferences that "a federal statute interferes with areas traditionally regulated by States."); *see also* ESKRIDGE, *supra* note 5, at 427–29 (summarizing further the detailed federalism canons).

G. Seventh Type of Canonical Queries: More Intent, Law, or Policy.

1. The Mandatory/Permissive Query.[218]

2. The Statutes in Derogation of Common Law Query.[219]

3. The Remedy Query.[220]

4. The Remedial Query.[221]

5. The Lenity Query.[222]

6. The Prospectivity Query.[223]

7. The Lawfulness Query.[224]

8. The Administrability Query.[225]

9. The Justice and Fairness Query.[226]

10. The Utility Query.[227]

---

218. *See* SCALIA & GARNER, *supra* note 4, at 433 (defining the "mandatory/permissive canon" as "[t]he doctrine that mandatory words impose a duty; permissive words grant discretion"). As the authors note, however, although "shall" is traditionally mandatory and "may" is traditionally permissive, "shall" is "a semantic mess." *Id.* at 112–15; *see also* RICHARD C. WYDICK, PLAIN ENGLISH FOR LAWYERS 63–4 (5th ed. 2005) (discussing authority words and problems with "shall").

219. *See Derogation Canon*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The traditional doctrine that statutes in derogation of the common law should be strictly construed."); *Derogation*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force.").

220. This query addresses what remedies (as a matter of interpretation or construction or both) are available in public and private law contexts.

221. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* in ways that liberally extend their remedial action. *See also* POPKIN, *supra* note 18, at 230 ("The remedial canon states that remedial statutes should be liberally construed."); *Remedial*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "remedial" as "[i]ntended to correct, remove, or lessen a wrong, fault, or defect" and providing "a remedial statute" as an example of the word used in context).

222. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* in ways that provide lenity. *See also* POPKIN, *supra* note 18, at 191 ("The lenity canon states that penal (criminal) statutes are narrowly construed to favor the criminal defendant.").

223. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* as prospective. *See*

APPENDIX B:
UNANNOTATED OUTLINE OF A NUMBER OF CANONICAL QUERIES

A. First Type of Canonical Queries: Transmitted/ Presented Text.

1. First Group: The Applicable Text Query and Its Subqueries.

a. The Applicable Text Query.

b. Subqueries of the Applicable Text Query.

2. Second Group: Initial Canonical Queries and Subqueries of Textual Clarity.

a. The Plain Meaning Query.

b. The Ambiguity Subquery.

c. The Vagueness Subquery.

---

also POPKIN, *supra* note 18, at 216 ("The 'prospectivity canon' presumes that a statute operates prospectively, unless the statute otherwise provides.").

224. In addition to addressing lawfulness and the meaning of text, this query can apply to speaker purpose or motive as well. Thus, construction might strike legislation involving unlawful purpose or motive. *See, e.g.*, N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204, 233 (4th Cir. 2016) (striking down voter legislation where "the General Assembly used [such legislation] to entrench itself . . . .by targeting voters who, based on race, were unlikely to vote for the majority party" and the majority party had an improper motive). Again, the query would distinguish between purpose (the linguistic sense of the goal of the matters addressed *within* the speech act) and motive (the desires or other *causes of* one's speech act). Thus, a statute could have a purpose of regulating voting that does not on its face address race while also having a racially discriminatory motive that results in construing the statute as unlawful.

225. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* in ways that can be efficiently and predictably administered. *See also* ESKRIDGE, *supra* note 5, at 434 (explaining that the administrability canon provides that one should "[interpret] statutes with an eye to creating a rule that can be administered efficiently and predictably by agencies and courts").

226. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* in ways that treat people fairly. *See also Fairness*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The quality of treating people equally or in a reasonable way" and "The qualities of impartiality and honesty."); *Justice*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining this foundational legal concept as "[t]he fair treatment of people" and "[t]he fair and proper administration of laws").

227. In addition to acts of construction, this query also recognizes that legislatures may intend that their legislation be *interpreted* in ways that promote utility. *See Utility*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The quality of serving some function that benefits society.").

d. The Indeterminacy Subquery.

3. Third Group: Canonical Queries of Grammar, Syntax, and Other Rules of Language.

a. The Ordinary Meaning Query.

b. The Technical and Term of Art Query.

c. The Grammar Query.

d. The Punctuation Query.

e. The Further Meaning Query.

f. The Irony/Nonliteral Meaning Query.

4. Fourth Group: Canonical Queries of Signifier Scope.

a. The Ejusdem Generis Query.

b. The Noscitur a Sociis Query.

c. The Expressio Unius Query.

d. The Antecedent/Subsequent Query.

e. The Anaphora Query.

5. Fifth Group: Canonical Queries of Signifier Fit and Coherence.

a. The Whole Text Query.

b. The No Surplusage Query.

c. The Absurdity Query.

d. The Scrivener's Error Query.

e. The Exercise of Power Query.

f. The Consistent Meaning Query.

g. The Fit with the Surrounding Text Query.

h. The In Pari Materia Query.

i. The Particular vs. General Query.

j. The Ellipsis Query.