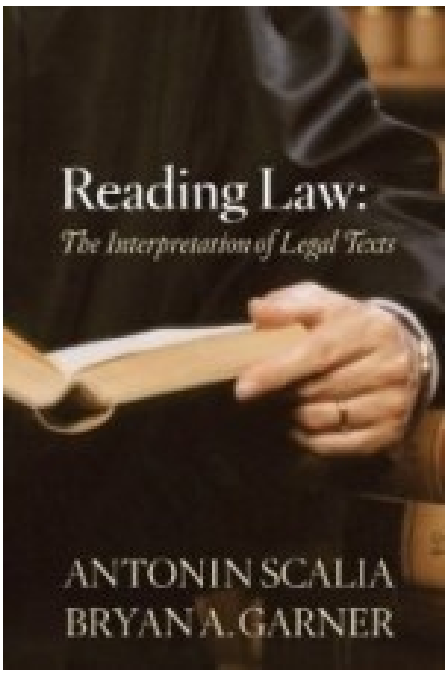

Reading Law: The Interpretation of Legal Texts

Antonin Scalia , Bryan A. Garner

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In this groundbreaking book, Scalia and Garner systematically explain all the most important principles of constitutional, statutory, and contractual interpretation in an engaging and informative style with hundreds of illustrations from actual cases. Is a burrito a sandwich? Is a corporation entitled to personal privacy? If you trade a gun for drugs, are you using a gun in a drug transaction? The authors grapple with these and dozens of equally curious questions while explaining the most principled, lucid, and reliable techniques for deriving meaning from authoritative texts. Meanwhile, the book takes up some of the most controversial issues in modern jurisprudence. What, exactly, is textualism? Why is strict construction a bad thing? What is the true doctrine of originalism? And which is more important: the spirit of the law, or the letter? The authors write with a well-argued point of view that is definitive yet nuanced, straightforward yet sophisticated.

Reading Law: The Interpretation of Legal Texts Details

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From Reader Review Reading Law: The Interpretation of Legal Texts for online ebook

Jake Gold says

Scalia and a lexicographer on scalia'a manner of reading law. This is a worthwhile perspective to read into. At the moment I am struggling to advocate for a living constitution, but I guess that just goes to show how convincing this book was.

I recommend this for anyone with an interesting in scalia's impact on America's supreme court and legal interpretation.

Kyra says

Good resource if you're interested in Original Meaning interpretation.

Dan says

I've had this on my "to read" shelf since 2012, when it came out, but was always put off by the price. Five years later, I still never see a used copy available for less than $40. It suggests that there is real demand for this book, so I used some gift cards on it, and I wasn't disappointed.

This is mostly a textbook you could use in a linguistics class that was focused on semantics. Scalia and Garner argue that when we talk about the judiciary as "interpreting the law," we are really talking about the judiciary interpreting the language of statutes and contracts, as the law consists of nothing other than that.

I find this approach persuasive, and this book eminently readable, complete with some classic Scalia witticisms, and a ton of useful examples. Scalia also takes a flamethrower to the use of "legislative history" in the review of federal laws, and is compelling in doing so.

Katherine Figueroa says

Great introduction. Read this book before law school, and it provided a framework that I was able to use during law school to not only understand the Constitution, but also interpret law generally.

Kaki says

I read this to prepare myself for my master's program in law since I have little academic background in law. Like with nearly everything else that professes to share the 'truth' of anything, this book ought to be taken with a grain of salt. He seems to be cherry picking when to be a "strict textualist". Overall though this will be a great resource in my school career, written perfectly for direct quotes and paraphrasing

Aaron says

This book collects in a single volume dozens of rules of interpretation for both statutes and contracts. Because it is written by Bryan Garner (the current authority on clear and compelling legal writing) and Justice Antonin Scalia (hands down, the author of the most entertaining Supreme Court opinions), the book is very readable. I agree with almost every point that is made in this book. The only thing I disagree with -- and my disagreement is quite strong -- is that the goal of interpretation, at least as it applies to contracts, is in fact to discern the intent of the parties to that contract. The starting place for that determination is, of course, the language of that contract, and thus, as argued in this book, courts (and attorneys) should focus on that language when interpreting the contract. But to reject legal concepts like "the meeting of the minds" and "mutual mistake" simply because they conflict with the idea that the text should be the benchmark of interpretation, which is what Garner and Scalia advocate, does violence to hundreds of years of precedent. I am convinced that an appeal to legistlative history to discover "legislative intent" is pure folly. And, of course, the parol evidence rule is an important one that must be followed. But this book goes too far when it contends that that there is no such thing as a requirement of a "meeting of the minds" in contract law or that "mutual mistake" is not a valid defense to a breach of contract action. Those principles are part of the bedrock of contract jurisprudence, and Garner and Scalia dismiss them with just a couple sentences and single citation to a secondary source in a footnote. Much more is required to negate hundreds of years of case law and legal commentary.

Christopher says

Reading Law is a very engaging and well written book, even if I, unsurprisingly, did not agree with all the authors' conclusions. The authors generally devote only a few pages to each canon, which allows for easy pacing. Although legal knowledge is not *required* to understand the book, the authors clearly assume that the reader has some familiarity with the law and do not explain a substantial number of the common law legal principles mentioned in the book. While its excoriation of purposivism does becoming wearing, *Reading Law* is certainly a worthwhile read.

Eric_W says

Justice Scalia has once again embarked on a defense of textualism, the theory of interpretation that argues one must look back at the original text and stick to the text when deciding a case. There is an enlightening debate between Judge Richard Posner and the book's co-author, Bryan Garner in the pages of The New Republic (see cites below,) which spilled over into several online blogs including the National Review Online.

All of us seek objectivity from the courts. That justices would want to base their decisions on some objective standard is laudable. Yet, we also want some common sense flexibility. Posner believes that Garner and Scalia are being obtuse if not disingenuous. Take the example of a statute that says, “ No person may drive any kind of vehicle in the park.” Now let’s say someone in the park is stricken with a heart attack. None of us would want to prohibit an ambulance from driving into the park, yet that’s a clear violation of the statute and a true textualist would *have* to permit prosecution of the driver, yet even Scalia and Garner refuse to go that far, so the line between true textualism and broader interpretation is variable indeed.

A problem that undermines their entire approach is the authors' lack of a consistent commitment to textual originalism. They endorse fifty-seven "canons of construction," or interpretive principles, and in their variety and frequent ambiguity these "canons" provide them with all the room needed to generate the outcome that favors Justice Scalia's strongly felt views on such matters as abortion, homosexuality, illegal immigration, states' rights, the death penalty, and guns.

Garner and Scalia insist that legislative history and debate should not be a source for judges when making decisions, yet Posner shows how Scalia has made exception to this dictum on numerous occasions. This, Posner suggests, hobbles legislatures and predisposes them toward smaller government. Well, duh, isn't that already the predisposition of conservatives (I hesitate to align small government with conservatism since government has often grown exponentially during the tenure of supposedly and self-anointed conservative presidencies.) Ironically, one might argue that a textualist approach to the ambulance problem cited above would lead to more rather than less regulation since the legislature would be forced to create new regulations defining vehicular exceptions to the original rule. Yet, legislative history showing that the purpose of the legislation was to prohibit ambulances would certainly be on-point.

Context can also not be ignored. The word "draft" depends for its meaning on context. It could refer to curtains blowing in the wind; conscription during wartime, the preliminary sketch of a book; or even a bank note. Scalia and Garner insist that meaning will come from other text in the statute. Nonsense, says Fish. "No, it won't. Take the sentence, "Let's avoid the draft." It could mean "let's get out of military service" (a fourth meaning of "draft"), or it could mean "let's go inside and diminish the risk of catching cold," or it could mean (as spoken by a general manager of a professional sports team) "let's bypass the unpredictability of the draft (a fifth meaning of draft) and trust in free agency," or it could mean "let's not do a draft of the bylaws (a sixth meaning of "draft") but get right to the finished product." The text does, as Scalia and Garner say, take it meaning from its purposive context, but the text won't tell you what that purposive context is."

Scalia, in the meantime, has gone on the offensive. "Scalia denied that he uses legislative history in his decisions: "We are textualists. We are originalists. We are not nuts." Apparently, Chief Justice Roberts is. The recent decision validating the Affordable Health Care Act (King v Burwell, 2015) Roberts wrote: "In this instance, the context and structure of the act compel us to depart from what would otherwise be the most natural reading of the pertinent statutory phrase."

Personally, in reading the decisions of Heller and MacDonald, and in listening to the oral arguments, it seemed to me that both sides were looking to original intent and legislative history for their own cherry-picking and from differing time periods, the minority looking to the fear of slave rebellions and hence the need for militias in 1789 while the majority focused on the need for individual armament for blacks to defend themselves against marauding whites after the Civil War. Posner, in his rebuttal, takes Scalia to taks for doing just that: " I said that "when he [Justice Scalia] looks for the original meaning of eighteenth-century constitutional provisions—as he did in District of Columbia v. Heller, holding that an ordinance forbidding people to own handguns even for the defense of their homes violated the Second Amendment—Scalia is doing legislative history."

Stanley Fish, in his praise of the book, perversely also noted that the "thesis that textualism is the one mode of legal interpretation that avoids subjectivity and the intrusion into judicial realm of naked political preferences" is wrong. Fish also scolds Scalia, "in NFIB v. Sebelius, Scalia the justice rejects the canon Scalia the author defends — but there can be little doubt that Roberts has canon #38, or something very much like it, in mind when he writes, "every reasonable construction must be resorted to in order to save a statute from unconstitutionality." (I believe he was quoting Justice White in Hooper v California, 1895.)

Posner ends his review with, "Justice Scalia has called himself in print a "faint-hearted originalist." It seems he means the adjective at least as sincerely as he means the noun."

I wondered if Scalia was wise to embark on writing this book. It would seem that his theological canons make him a target for some serious textual parsing.

Regretfully, I fear that Michael Dorfman's comments may be closest to the mark, another validation of confirmation bias. "The core claim of Scalia and Garner is that textual originalism is determinate in a way that other interpretive methodologies are not. If that claim were true, one would expect to find that the votes of judges and Justices who describe themselves as textualist do not strongly correlate with their ideological views, while judges and Justices who reject textualism do vote in ideologically predictable ways. Yet in fact, all judges vote in ideologically predictable ways."

Me? I just want fairness, common sense, and to be left alone. But I sure love the debate. Reading the differing points of view has provided this old man with several very entertaining hours of pleasure.

http://www.tnr.com/article/magazine/b...#

Garner's response: http://www.tnr.com/article/politics/1...

http://www.chicagotribune.com/news/ch... and Posner's response: http://www.tnr.com/blog/plank/107549/...

The National Review's response to the Posner review. :http://www.nationalreview.com/bench-m...#

Stanley Fish: http://opinionator.blogs.nytimes.com/...

edited 7/2015 to add King v Burwell and make some editorial corrections

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Adam Gravano says

At first, I thought this would be an elaborate attempt to taunt the illiterate, something on the order of, "we made you a self help book on how to read." I was quite happy to find in it an exposition on a close reading approach to legal statute. The authors looked to compile methods on resolving textual ambiguity, and, despite there being some controversy over time about how to do so in certain cases, largely give some concept of how judges and courts might do so without looking beyond statutory text (and why this is a good thing). While I can't say I agree with every conclusion of the authors, I can say it provides a great starting point.

Salem Lorot says

As a Legislative Drafter, I found this book to be extremely useful. Previously, I had superficial knowledge on canons of interpretation. Also, the concept of originalism as well expounded by Antony Scalia and Bryan A. Garner is now seared into my mind. Like any other academic book, I will read and re-read this book so many times.

Mark says

Authors argue that judge-made common law gave coherence to the law when there were few statutes. Now

that democratically enacted ordinances, statutes, and rules abound, "the judge's principal function is to give those texts their fair meaning." A fair readings of the words of a statute should give those words the meaning "they conveyed to reasonable people at the time they were written." The book then sets out the plethora of "rules" for reading statutes that lawyers and judges rely on. The book discusses how each, from the author's point of view, can yield a fair reading of the words of a statute. Well-written and thought provoking.

Dsolove says

This book is a must for lawyers. The format and style are easily approachable for non-lawyers as well. For those concerned about Supreme Court decisions and justices, this book explains why "conservative" justices are often so-called swing votes on any court. They are not ideologically predisposed to come to ideological conclusions but carry out their true and indeed only legitimate role of applying rules to parse the meaning of contracts, laws and constitutions. There is no alternative that upholds the rule of law. Otherwise a judge does what he or she believes is right ignoring the legislative branch's role or the contracting party's chosen language. This is a long book but if the introduction (a significant, lengthy explanation of Scalia's legal philosophy) is the only thing you read, it may be enough. The rest of the book is a wonderful reference for lawyers.

Brent says

How to be Textualist

“Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.” –Chief Justice John Marshall

“‘Cause you know sometimes words have two meanings.” –Led Zeppelin

Words are slippery things. The same word can be used to designate almost an infinite number of meanings. I am running in the race. I am running for public office. I am running a lemonade stand. Sometimes, social context can completely change phrases from having a connotation of strong condemnation to reverberations of high praise. This is true, for example, when Queen Anne (probably apocryphally) described Christopher Wren’s architecture in the 18th Century as “awful, artificial, and amusing.” Today, these labels are slapped on works of art that are terrible, fake, and immature. But in those days, Queen Anne was lauding the work for inspiring awe, constituting great art, and pleasing aesthetically.

In America’s system of positive law, courts are meant to be legal—not political—institutions. Achieving this role crucially depends on judges fairly and accurately applying the text of the law rather than some perceived vision of the good or a more just society. These latter tasks fall to the democratically elected legislators. But how can judges reliably achieve this Herculean task when the English language presents so many difficulties of interpretation? In this book, Justice Scalia and Bryan Garner present a very excellent explanation.

The answer to this question lies in the use of “canons of interpretation,” which this book thoroughly analyzes. These are rules which textualist judges ought to use in order to curtail (not necessarily eliminate) judicial discretion and apply a fair reading of a legal text. Some of these rules apply to all legal texts. For example, the ordinary-meaning canon establishes that legal terms ought to be given their everyday meaning, the meaning which would be understood by a citizen who has to abide by them. In this endeavor, the use of a

respected English dictionary is helpful. The surplusage canon establishes that, if possible, every word of a legal text ought to be given its meaning. Others of these widely applying canons are more technical. The ejusdem generis canon, for example, specifies that when there is a list of particular terms followed by a general phrase such as “and any other item” or “and any other person,” the general phrase includes only those items and people similar to those mentioned in the list of particular terms. Any other interpretation renders this list of particular items meaningless. The general-specific canon, furthermore, specifies that when a general provision conflicts with a specific one, the specific provision ought to be given more weight.

Some of these principles apply only to governmental prescriptions. For example, the constitutional doubt canon specifies that legislation should be read in a way that avoids putting the legislation’s constitutionality in doubt. The rule of lenity, furthermore, states that ambiguity in a criminal law statute should be interpreted in favor of the defendant since it is the role of the legislature—not the courts—to decide how punishment ought to be distributed.

This book also does an excellent job at explaining whence these canons derive their authority. One could appeal to tradition and custom and argue that they derive legitimacy from the fact that they have been in use for quite some time. Fair enough, but this always seemed to be tenuous ground to me. It seems similar to those who argue that the Designated Hitter ought to be done away with since it is contrary to the way baseball has always been played. The problem with these arguments is that they can be used to support opposing theories as well. The Designated Hitter has now been around for more than 30 years. By the same argument proposed by the anti-Designated Hitter crowd, the pro-Designated Hitter argument can be made with equal force. Similarly, by this argument, if judges stray from the canons long enough, they will lose their legitimacy.

This book seems to have better arguments as to the source of these canons’ legitimacy. First, Scalia and Garner argue that these canons attempt to capture how a reasonable citizen, subject to these laws, would use the language in which they are written and understand how they apply. This argument goes back in some ways to the classic story of Caligula the Roman emperor who placed the laws on the top of a tall pole where no one could see them. Law’s legitimacy depends on its being understood by those who are subject to it. The canons, though not perfectly, probably capture the meaning of the English language better than any other alternative.

Second, the book makes numerous mentions of how these rules are, in large part, understood in the law-drafting community. Central to the question of a law’s interpretation is the legislature’s intent in passing the law. It should be stressed, however, that this intent must be wholly derived from the text and not imputed by the judge’s preferences as it was in the Holy Trinity case. If intent is to be determined entirely from the text, there must be a set of known rules in which a statute’s drafters can convey its intent by means of language. The canons serve as these rules. When drafters stick to these well-known canons, the courts do not have to resort to the risky business of imputing intent, relying on the expressed intent of one legislator over the entire legislature, or looking to legislative history.

“Reading Law” is not primarily a philosophical defense of textualism. Rather, it fills an important role in specifying how to be a textualist. And in that endeavor, I think it clearly succeeds.

Maggie Holmes says

This book is fascinating, especially for a law junkie like me. I now understand what Scalia was trying to do. The problem isn't with the Supreme Court; the problem is that the legislature isn't writing good laws and isn't

writing needed laws to cover our changing society. It isn't the job of the Supreme Court or any court to legislate. What happens, though, when different parts of the country have different opinions about what is right? How can minority rights be protected? Thank goodness we have a constitution. It will be interesting to see how the Supreme Court votes on the transsexual bathroom issue. Again, a minority whose rights need protecting versus a moral view by different groups. (Or is it a moral view, a religious one, a status quo one?) This was recommended by Justice Elena Kagan on a CSPAN show.

Lynn says

This book I read over a period of several months, putting it down for several months in the middle, and then surging to a finish the last week or two. It's one of those projects I picked up because of my enduring interest in the technicalities of the English language and because I'm a fan of Bryan A. Garner in particular, who mentioned the book in the published version of his interview with David Foster Wallace.

I'm not a lawyer. Most of what I know about law before reading this book I learned from reading almost all of John Grisham's novels. But the subject does interest me, particularly the matter of judging law, which has so much to do with the careful analysis and interpretation of written words, especially those created and enacted by legislatures as laws that have a bearing on people's lives.

I'm aware that many people have views of the US Supreme Court that is skewed by personal political inclinations, and that their view of the law is sometimes skewed by their personal opinion of the men and women who make up the Court at any give time. In regard to their own political, it seems that Justice Scalia and Mr. Garner are nearly polar opposites. That they were able to cooperate so well to create such an excellent book on how to interpret the written law is in itself proof of the worthiness of their conclusions

It strikes me that the canons of interpretation that Scalia and Garner elucidate (which are not original, but have been a part of the practice of law for generations) contain principles that can and should be extended to apply to the understanding of written texts other than law, e.g., to Scripture, science, and other works of non-fiction.

Reading Law is not easy reading, but it's spiced with humor and good examples, and is designed to be read by educated readers of any sort, not just those whose business in the law.
