



A NOTE ON THE USE OF DICTIONARIES

Antonin Scalia & Bryan A. Garner

“When [lawyers and judges] look up a word in a dictionary – and they often do – they are as likely as not to select a poor dictionary.”

– Max Radin*

LORD MACMILLAN WAS HARDLY OVERSTATING the case in 1938 when he said that “one of the chief functions of our courts is to act as an animated and authoritative dictionary.”¹ The reason is that with legal interpretation, inevitably “[t]he words used by one set of persons have to be interpreted by another set of persons.”² So it is understandable that so-called judicial dictionaries have been assembled over the years – sometimes vast compilations of judicial pronouncements about what a given word or phrase means. In that genre, the leading American text is the 132-volume set of *Words and Phrases* (permanent edition

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* “A Juster Justice, a More Lawful Law,” in *Legal Essays in Tribute to Orrin Kip McMurray* 537, 538 (Max Radin & A.M. Kidd eds., 1935).

¹ Lord Macmillan, *Law and Other Things* 163 (1938).

² *Id.*

updated yearly); the leading British text is the 3-volume *Stroud's Judicial Dictionary* (6th ed. 2000).

Unsurprisingly, in their work as part-time lexicographers, judges frequently have occasion to consult the work of professional lexicographers. In § 6 [of *Reading Law: The Interpretation of Legal Texts*], we criticized an appellate judge for relying on a “nonscholarly” dictionary – the 1980 edition of the *Oxford American Dictionary* (see p. 75). In lexicographic circles, that book is known to have been hastily put together by two editors on short notice, and very much on the cheap. The main part of the dictionary runs to only 816 pages. The look and feel of the book do not impress the user as being scholarly. By *scholarly* we mean weighty. Not superficial. Chock-full of erudition. Later editions of that dictionary, by contrast, are better works of scholarship.

Consider an illuminating example of how an uncritical approach to dictionaries can mislead judges – an example akin to one we have already considered. Let us say that you are a judge called on to decide whether fighting cocks qualify as *poultry* under a recent statute that gives a tax deduction for any person who “rears poultry.” And assume, for the purposes of this hypothetical decision, that cock-fighting is not illegal in your jurisdiction. You consult a dictionary for whatever light it might shine on this definitional issue. But which one? If you are linguistically naive, you might suppose that dictionaries are all basically the same. You have in your office five dictionaries of not-too-distant vintage whose definitions are as follows:

- **1951:** “domestic fowls collectively, as chickens, turkeys, guinea fowls, ducks, and geese.”³
- **1956:** “domestic fowls, generally or collectively, as hens, ducks, etc.”⁴
- **1975:** “domestic fowls, as chickens, ducks, turkeys, and geese.”⁵

³ *The American College Dictionary* 949 (1951).

⁴ *Funk & Wagnalls New College Standard Dictionary* 919 (1956).

⁵ *The Doubleday Dictionary for Home, School, and Office* 568 (1975).

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- **1999:** “chickens, turkeys, ducks, and geese; domestic fowl.”⁶
- **2003:** “domestic fowls collectively.”⁷

You might be tempted to reason from these definitions that (1) fighting cocks are raised in pens and are not found in the wild – and to that extent are “domesticated”; (2) the definitions stress generality and collectiveness, so this type of fowl would seem to qualify; and (3) fighting cocks as a matter of fact are chickens, and chickens are explicitly mentioned in three of the five definitions.

And if you so reasoned, you would arrive at an incorrect result mainly because of the unreliable, rather threadbare definitions you have consulted.

The all-important element found in unabridged dictionaries – and even in the better desktop dictionaries – is that poultry is used for food. These definitions are much superior because they are fuller and more explanatory:

- **1934:** “any domesticated birds which serve as a source of food, either eggs or meat.”⁸
- **1971:** “domesticated birds kept for eggs or meat.”⁹
- **1987:** “domesticated fowl collectively, esp. those valued for their meat and eggs, as chickens, turkeys, ducks, geese, and guinea fowl.”¹⁰
- **1993:** “Domestic fowl; birds commonly reared for meat, eggs, or feathers in a yard, barn or other enclosure, as chickens, ducks, geese, turkeys, or guinea-fowl (usu. excluding game-birds, as pigeons, pheasants, etc.). Also, such birds as a source of food.”¹¹

⁶ *The Concise Oxford Dictionary* 1121 (10th ed. 1999).

⁷ *The Times English Dictionary and Thesaurus* 920 (2d ed. 2003).

⁸ *Webster's Second New International Dictionary* 1934 (1934).

⁹ *Webster's Seventh New Collegiate Dictionary* 665 (1971) (same definition in 11th ed. 2003).

¹⁰ *Random House Dictionary of the English Language* 1515 (2d ed. 1987).

¹¹ *The New Shorter Oxford English Dictionary* 2312 (4th ed. 1993).

- **2007:** “domestic fowls raised for meat or eggs; chickens, turkeys, ducks, geese, etc. collectively.”¹²
- **2011:** “domesticated fowl, such as chickens, turkeys, ducks, or geese, raised for meat or eggs.”¹³

Because these definitions give a much different view of the word’s scope, they would almost certainly prevent a judge from coming to the false conclusion that fighting cocks qualify as poultry.

Hence a comparative weighing of dictionaries is often necessary.¹⁴ In one case, the Supreme Court of the United States had to decide whether *modify* in a telecommunications statute meant “to change moderately” or “to change fundamentally.”¹⁵ The petitioners cited only a single dictionary supporting the fundamental-change sense – the notoriously permissive *Webster’s Third New International Dictionary* (1961) – when all the other cited dictionaries supported the moderate-change sense.¹⁶ The Court properly rejected the idea that the out-of-step definition created a genuine ambiguity.¹⁷

But courts must take care in such analyses. Occasionally most dictionaries will define a word inadequately – without accounting for its semantic nuances as they may shift from context to context – and a given dictionary will improve on the others. When that is so, the more advanced semantic analysis will be preferable.

The primary principles to remember in using dictionaries are these:

- A dictionary definition states the core meanings of a term. It cannot delineate the periphery.

¹² *Webster’s New World College Dictionary* 1127 (4th ed. 2007).

¹³ *American Heritage Dictionary of the English Language* 1380 (5th ed. 2011).

¹⁴ See Michael B.W. Sinclair, *Guide to Statutory Interpretation* 137 (2000) (“[I]f you use a dictionary, use more than one and check editions from the date of enactment as well as current.”).

¹⁵ *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218 (1994) (per Scalia, J.) (interpreting 47 U.S.C. § 203(b)(2)).

¹⁶ *Id.* at 225-26.

¹⁷ *Id.* at 226-28.

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- Because common words typically have more than one meaning, you must use the context in which a given word appears to determine its aptest, most likely sense.
- You must consult the prefatory material to understand the principles on which the dictionary has been assembled. The ordering of senses provides a classic example. Although many people assume that the first sense listed in a dictionary is the “main” sense, that is often quite untrue.¹⁸ Some dictionaries list senses from oldest in the language (putting obsolete or archaic senses first) to newest. Others list them according to current frequency. Using a dictionary knowledgeably requires a close reading of the principles discussed at the outset.
- Dictionaries tend to lag behind linguistic realities – so a term now known to have first occurred in print in 1900 might not have made its way into a dictionary until 1950 or even 2000. If you are seeking to ascertain the meaning of a term in an 1819 statute, it is generally quite permissible to consult an 1828 dictionary.
- Historical dictionaries, such as *The Oxford English Dictionary* (20 vols.; 2d ed. 1989; updated online) or the out-of-print *Century Dictionary* (12 vols.; last revised 1914), are the most reliable sources for historical terms. But they are often least useful for very recent shifts in meaning.

Among contemporaneous-usage dictionaries – those that reflect meanings current at a given time – the following are the most useful and authoritative for the English language generally and for law. Note, however, that *The Oxford English Dictionary* is also useful for each period because it shows the historical development of word-senses.

¹⁸ See *Muscarello v. United States*, 524 U.S. 125, 128 (1998) (per Breyer, J.) (erroneously suggesting that the first meaning listed in the *Oxford English Dictionary* is the “primary meaning,” as opposed to the oldest). Cf. *Mississippi Poultry Ass’n, Inc. v. Madigan*, 992 F.2d 1359, 1369 (5th Cir. 1993) (Reavley, J., dissenting) (“I cannot imagine that the majority favors interpreting statutes by choosing the first definition that appears in a dictionary.”), *aff’d on reh’g*, 31 F.3d 293 (5th Cir. 1994) (en banc).

1750-1800

English Language

1755: Samuel Johnson, *A Dictionary of the English Language*, 2 vols. (appearing also in a second edition of 1756, a third of 1765, and a fourth of 1773; the final edition in Johnson's lifetime was the fifth edition of 1784)

1757: Nathan Bailey, *A Universal Etymological English Dictionary* (14th ed. – issued in many editions of roughly comparable quality)

1760: Thomas Dyche & William Pardon, *A New General English Dictionary* (12th ed. – issued in many editions of roughly comparable quality)

1775: John Ash, *The New and Complete Dictionary of the English Language*, 2 vols.

Law

1771: Timothy Cunningham, *A New and Complete Law Dictionary*, 2 vols. (2d ed. 1771; 3d ed. 1783)

1772: Giles Jacob, *A New Law Dictionary* (9th ed. 1772; 10th ed. 1782)

1792: Richard Burn, *A New Law Dictionary*, 2 vols.

1797-1798: William Marriot, *A New Law Dictionary*, 4 vols. (an updating of Cunningham¹⁹)

1801-1850

English Language

1806: Noah Webster, *A Comprehensive Dictionary of the English Language* (an abridged dictionary containing brief definitions of only the most common terms)

¹⁹ See Bryan A. Garner, Introduction to William Marriot, *A New Law Dictionary* (1797; repr. 2011) (demonstrating that Marriot's work was not a new dictionary, but only a new edition of Cunningham).

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1818: Samuel Johnson, *A Dictionary of the English Language*, 5 vols. (H.J. Todd ed.)

1828: Noah Webster, *An American Dictionary of the English Language*, 2 vols. (an unabridged dictionary)

1850: John Boag, *A Popular and Complete English Dictionary*, 2 vols.

Law

1803: Thomas Potts, *A Compendious Law Dictionary*

1816: Thomas Walter Williams, *A Compendious and Comprehensive Law Dictionary*

1829: James Wishaw, *A New Law Dictionary*

1835: Thomas Edlyne Tomlins, *The Law-Dictionary*, 2 vols. (also in 1809 and 1820 editions)

1839: John Bouvier, *A Law Dictionary*, 2 vols. (1st ed.)

1847: Henry James Holthouse, *A New Law Dictionary* (Henry Penington ed., Am. ed.)

1850: Alexander M. Burrill, *A New Law Dictionary and Glossary*

1851-1900

English Language

1860: Joseph Worcester, *A Dictionary of the English Language* (or other editions during the period)

1882: Robert Gordon Latham, *A Dictionary of the English Language*, 2 vols. (an updating of Johnson)

1882: James Stormonth, *A Dictionary of the English Language*

1882: Noah Webster, *A Dictionary of the English Language* (or other editions during the period)

1895: *The Century Dictionary and Cyclopedia*, 10 vols.

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1897: Robert Hunter & Charles Morris, *The Universal Dictionary of the English Language*, 4 vols.

Law

1859: Alexander M. Burrill, *A Law Dictionary and Glossary* (2d ed.)

1860: J.J.S. Wharton, *Law Lexicon, or Dictionary of Jurisprudence* (2d Am. ed.)

1879: Benjamin Vaughn Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence*, 2 vols.

1883: John Bouvier, *A Law Dictionary*, 2 vols. (15th ed.)

1883: Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law*, 2 vols.

1890: William C. Anderson, *A Dictionary of Law*

1891: Henry Campbell Black, *A Dictionary of Law*

1893: J. Kendrick Kinney, *A Law Dictionary and Glossary*

1901-1950

English Language

1903: *The Century Dictionary and Cyclopedia*, 10 vols. (or other editions during the period)

1933: *The Oxford English Dictionary* (the first complete edition was called *The New English Dictionary*²⁰)

1934: *Webster's Second New International Dictionary*

1943: *Funk & Wagnalls New Standard Dictionary of the English Language*, 2 vols. (rev. ed.)

²⁰ See Edward Jenks, *The New Jurisprudence* 90 (1933) ("As a matter of fact, a copy of the *New Oxford Dictionary* has become an almost essential feature of the libraries of most of the English higher tribunals, for the purpose of assisting them in the interpretation of statutes.").

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1901: Walter A. Shumaker & George Foster Longsdorf, *The Cyclopedic Dictionary of Law*

1910: Henry Campbell Black, *A Law Dictionary*, (2d ed. 1910; 3d ed. [retitled *Black's Law Dictionary*] 1933)

1911: J.J.S. Wharton, *Wharton's Law Lexicon* (W.H. Aggs ed., 11th ed.)

1919: Benjamin W. Pope, *Legal Definitions*, 2 vols.

1940: *Bouvier's Law Dictionary* (William Edward Baldwin ed.) (or other editions during the period)

1951-2000

English Language

1961: *Webster's Third New International Dictionary* (a dictionary to be used cautiously because of its frequent inclusion of doubtful, slipshod meanings without adequate usage notes²¹)

1969: *American Heritage Dictionary of the English Language* (2d ed. 1980; 3d ed. 1996; 4th ed. 2001)

1987: *The Random House Dictionary of the English Language* (2d unabridged ed.)

1989: *The Oxford English Dictionary* (2d ed.)

1993: *Merriam-Webster's Collegiate Dictionary* (10th ed.; 11th ed. 2003)

1996: *Webster's New World College Dictionary* (3d ed.; 4th ed. 2007)

²¹ See generally *Dictionaries and That Dictionary* (James Sledd & Wilma R. Ebbitt, eds., 1962). See also *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 228 n.3 (1994) (per Scalia, J.) (noting that “[u]pon its long-awaited appearance in 1961, *Webster's Third* was widely criticized for its portrayal of common error as proper usage,” and citing as an instance “its approval (without qualification) of the use of ‘infer’ to mean ‘imply’”).

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1969: James A. Ballentine, *Ballentine's Law Dictionary* (William S. Anderson ed., 3d ed.)

1970: Max Radin, *Law Dictionary* (Lawrence G. Greene ed., 2d ed.)

1990: *Black's Law Dictionary* (4th ed. 1951; 5th ed. 1981; 6th ed. 1990; 7th ed. 1999)

1995: Bryan A. Garner, *A Dictionary of Modern Legal Usage* (2d ed.)

1996: *Merriam-Webster's Dictionary of Law*

2001-PRESENT

English Language
(up-to-date editions)

The Oxford English Dictionary (online edition)

American Heritage Dictionary of the English Language

Merriam-Webster's Collegiate Dictionary

The New Oxford American Dictionary

The New Shorter Oxford English Dictionary

Webster's New World College Dictionary

The Cambridge Guide to English Usage

Garner's Modern American Usage

Law

2009: *Black's Law Dictionary* (9th ed.)

2011: *Merriam-Webster's Dictionary of Law* (2d ed.)

2011: *Garner's Dictionary of Legal Usage* (3d ed.)

When using modern desktop dictionaries, be sure you have the current edition; they are periodically updated and improved.