Bryan Garner is a man with a mission. In again updating and revising the “standard US law dictionary,” Garner seeks not only to accurately define a comprehensive list of legal terms, but, more fundamentally, to elevate legal scholarship. It’s an ambitious undertaking (and one whose premise might be questioned by many scholars). But, if there is anyone suited for such pursuits, in both intellect and temperament, it’s Bryan Garner.

Most of us think of dictionaries as handy reference tools, to be consulted when all else fails. In 1910, a reviewer of Black’s second edition was clearly in desperate straits when the book arrived to his rescue: “[w]e were so grateful for the assistance rendered by this work in a moment of exigency when it arrived that we are not disposed to view it other than favorably.” And, as practical tools, to students and scholars alike, legal dictionaries are well-used. But Garner’s dictionaries (and, in due time, they may well be called such – as opposed to Black’s), while satisfying the demands of the definition-hungry in times of famine, aspire to greater goals. The eighth edition of Black’s, continuing the mission begun in the seventh, seeks to educate, inform, analyze, and describe from a higher perspective. Garner’s definitions are current and succinct, yet are placed in an historical perspective and in a context of usage that is so grateful for the assistance rendered by this work in a moment of exigency when it arrived that we are not disposed to view it other than favorably.” And, as practical tools, to students and scholars alike, legal dictionaries are well-used. But Garner’s dictionaries (and, in due time, they may well be called such – as opposed to Black’s), while satisfying the demands of the definition-hungry in times of famine, aspire to greater goals. The eighth edition of Black’s, continuing the mission begun in the seventh, seeks to educate, inform, analyze, and describe from a higher perspective. Garner’s definitions are current and succinct, yet are placed in an historical perspective and in a context of usage that is

sensible and, in many cases, enlightening. If, as it has been suggested, dictionaries “reveal a truth,”4 the eighth edition of Black’s strives to reveal a higher truth, one that has solid (and cited) foundations in centuries of American and English jurisprudence.

Black’s is the last standing comprehensive American legal dictionary;5 accordingly, there may be little need for a review of Black’s eighth edition. After all, if a current, comprehensive legal dictionary is required, one has no choice but to turn to Black’s. But, because we think the eighth edition makes significant contributions to lexicography and distinguishes itself from its predecessors, review it we will.

What’s most important in assessing the value of the eighth edition, both as a reference tool and as a work of scholarship, is how well the dictionary fulfills its purposes. Garner has set lofty purposes indeed. The eighth edition fulfills those purposes well; its distinctiveness as a law dictionary – the personality, if you will, of the work itself and of its editor – is, in part, what enables it to so effectively accomplish (or nearly accomplish) those goals.

1. “The business of the lexicographer is … to do what cannot be done …”6

It’s well to distinguish between the purpose of a dictionary and the intent behind the individual definitions that make up the dictionary. And, while the dictionary itself, as well as the definitions of which it consists, should be both comprehensive and convenient (the “two canons of lexicography”7), the line between “completeness and madness”8 is a very hard one to draw.

To define is to set limits.9 While other endeavors encourage creativity in word use, the law does not. While e. e. cummings (a format which would be recognized by none of the Bluebook, the Maroonbook, the Greenbook, or ALWD10) might write of the “pale club of the

4 “One historian of lexicographers explains that for both Dr. Johnson and Noah Webster ‘their role was not simply to select a word list, define it, and make it available to the reading public; in addition they took on the priestly task of revealing a truth, in this case a linguistic one, to those who, like lay parishioners, were less than perfectly versed in its subtleties.’” Ellen P. Aprill, “The Law of the Word: Dictionary Shopping in the Supreme Court,” 30 Arizona State Law Journal 275, 284 (1998), quoting Jonathon Green, Chasing the Sun: Dictionary Makers and the Dictionaries They Made 16 (New York: Henry Holt, 1996).


9 Ibid., 152.

wind”¹¹ and Ben Okri of “a smile of riddles,”¹² we don’t encourage radically new word use in the law. Consider the meaning invested in the word “mother” by Saddam Hussein when he spoke of the “mother of all battles.”¹³ While it might be appropriate for a general language dictionary to reflect this meaning of the word (and the 11th edition of Webster’s Collegiate does¹⁴), there’s no corresponding need for that sense in a legal dictionary. It’s irrelevant. The legal definition of mother has certainly evolved,¹⁵ but that evolution has been supported (and authorized) by the judiciary, legal scholars, and practicing attorneys.

The prescriptivist/descriptivist debate¹⁶ loses some relevance in the context of a law dictionary. Law invests words with legitimacy and authority; it’s the obligation of the law dictionary to reflect those meanings and evidence the authority supporting them. What distinguishes a law dictionary from a mere “word book” (as the New York Times once dismissed Webster’s third edition¹⁷) is its marshalling of examples of word usage in legal contexts, its sense-making of those usages, and its reliance on authority to justify its determination of what is appropriate, and what is not.

While many definitions in the eighth edition are enhanced by West key number references, and cross-references to Corpus Juris Secundum, and others by quotations from recognized authorities, some definitions are not supported by evidence. For the most part, these unattributable definitions are for terms whose basic meaning is similar in legal and non-legal contexts (e.g., mitigate, income, incognito), but there are other definitions for which the lack of authority is more problematic (where did the error-of-judgment rule develop, and, in what scenarios can someone be said to exercise due influence?).

And, what of legal slang? The eighth edition includes any number of examples of law-related slang absent from prior editions. For these new entries, some information about the derivation of the terms would have been useful. Who knew that a smurf was, in fact, “a person who participates in a money-laundering operation by making transactions of less than $100,000”?¹⁸ While Garner notes that the term has its origins in the short blue cartoon character, he doesn’t give any sources for his definition or any reason why that short blue cartoon character would somehow be related to money-laundering.

But these are minor quibbles. More interesting are those words that resist concise definition. In his 1933 review of Black’s

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¹¹ e. e. cummings, “i have found what you are like.”
¹⁴ “mother … 5 : something that is an extreme or ultimate example of its kind esp. in terms of scale .” Merriam-Webster’s Collegiate Dictionary, 11th ed. (Springfield, MA: Merriam-Webster, Inc., 2004), 810.
¹⁵ The first edition of Black’s defined ‘mother’ as “a woman who has borne a child.” Henry Campbell Black, A Dictionary of Law (St. Paul, MN: West Publishing Co., 1891), 791. By the eighth edition, ‘mother’ was defined as a “woman who has given birth to, provided the egg for, or legally adopted a child.” Garner, ed., Black’s Law Dictionary, 8th ed., 1035.

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third edition, Alexander Hamilton Frey bemoaned the efforts of legal lexicographers to "arrive at a concise crystallized definition [of words] ... such as title, property, ... which defy definition because they are employed in legal terminology in a variety of senses for a variety of purposes." 19 Frey longed for "an honest law dictionary ... in which the editor does not hesitate to discuss where definition is fatuous." 20

Definitions create categories; concepts either fall within those categories (and so are included in the senses of a word) or do not. Those categories, in turn, set forth a number of necessary and sufficient conditions for inclusion in them. The 'easy' members of a category clearly satisfy those conditions; the outliers, occurring at the 'fuzzy' edges of the category, cause more problems. 21 A robin is obviously a good example of a bird, a penguin less so. 22 Garner defines property first as "the right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership," and, second, as "any external thing over which the rights of possession, use and enjoyment are exercised." 23 So, for a concept or thing to fall within the second definition of property, it must be a thing and it must be subject to ownership by an individual who is entitled to use it. Definitions of 48 related terms that incorporate the word property (e.g., lost property, intellectual property, mislaid property, real property, wasting property) and that evidence the evolution of the concept, follow Garner's succinct definitions of the word. Multi-volume treatises have been written on property; because we understand Garner's definition does not mean that we can fathom all of its implications. But the definition of property, and the definitions of related terms that follow, enable us to 'see' property in a legal context and to witness the development of related concepts that have grown out of the idea of property itself.

The student will find comfort in understanding that property is a right, that libel must be expressed in a fixed medium, and that the Sherman Act pertains to antitrust. The layperson will welcome the concise explanation of a wraparound mortgage or even of a denial of service attack. The practitioner venturing outside his area of expertise may turn to the definition of debtor's examination to find citations to sections of the Bankruptcy Code and to federal rules of bankruptcy procedure. The scholar, in addition to noting the 48 terms related to property, will appreciate citations to cases that establish the Shively presumption, the comparativist to the description of mahr. 24 And, the historian will revel in definitions of deodand, the Mad Parliament, livery in chivalry, and parapherna. 25

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20 Ibid., 887.
22 For a general discussion of basic level categories and prototypical category members, see George Lakoff, Women, Fire, and Dangerous Things: What Categories Reveal about the Mind (Chicago: The University of Chicago Press, 1987). On page 56, Lakoff refers to the 'bird' category.
24 Shively presumption: "[t]he doctrine that any prestatehood grant of public property does not include tidelands unless the grant specifically indicates otherwise"; mahr: "Islamic law. A gift of money or property that must be made by a man to the woman he marries." Ibid., 971, 1411, 1412.
25 Deodand: "[s]omething (such as an animal) that has done wrong and must therefore be forfeited to the..."
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lawyer, the eighth edition provides reliable and abundant ammunition.

2. “Words come into being, do service, and pass away, as really as bodies…”

If words have a useful life, then so do dictionaries. *Black’s* began in 1891; its full title reminds us of a proud parent, christening his first-born — “A Dictionary of Law Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern including the Principal Terms of International, Constitutional, and Commercial Law; with a Collection of Legal Maxims and Numerous Select Titles from the Civil Law and Other Foreign Systems.”

The full title of the second edition (repeated, with only slight variations, in the third) attests to youthful exuberance — as new and exciting features are recalled, they burst forth —

A Law Dictionary: Containing Definitions of the terms and phrases of American and English jurisprudence, ancient and modern. And including the principal terms of international, constitutional, ecclesiastical, and commercial law, and medical jurisprudence, with a collection of legal maxims, numerous select titles from the roman, modern civil, scotch, French, Spanish and Mexican law, and other foreign systems, and a table of abbreviations.

By its fourth edition, the work had achieved a certain maturity; the titles to the fourth, fifth, and sixth editions no longer include the litany of contents, but there is still the need to describe what the work is — “Black’s Law Dictionary: Definitions of the terms and phrases of American and English jurisprudence, ancient and modern.” By the seventh edition, any description on the title page has become superfluous; having established itself and being in its prime, the dictionary, in its seventh and eighth editions, is simply “Black’s Law Dictionary.”

In style and content, the eighth edition reflects its past and the present. Words and phrases, however seldom used, that have contributed to an understanding of current jurisprudence continue to be included in the dictionary, often with an explanation of their import (e.g., disentailing deed, praesumitur pro negante, steganography). New words and terms have been added — some terms we would expect, given our times and new developments in the law — denial of service attack, same-sex marriage, cyberpiracy, and veggie-libel law. But the eighth edition also includes, for the first time, terms like ethnic cleansing and zero-tolerance policy, phrases that are familiar to us in more than one context, but whose sense in a legal context is much harder to articulate.

Since the first edition of *Black’s*, its editors have been conscious of the encroachment of vocabulary from other fields into the disci-

Crown”; Mad Parliament: “[i]n 1258, an assembly of 24 barons summoned to Oxford by Henry III that ultimately carried out certain reforms to settle differences between the king and the barons”; livery in chivalry: “[t]he delivery of possession of real property from a guardian to a ward in chivalry when the ward reached majority”; parapherna: “[p]roperty of a wife not part of her dowry ... a married woman’s personal property.” Ibid., 467, 953, 969, 1143.


pline of law. The second edition specifically included “terms of medical jurisprudence.” By the fifth edition, the focus had shifted from science to finance; its preface warned that the “ever expanding importance of financial terminology … necessitated inclusion of numerous new tax and accounting terms.”

By the eighth edition, no special mention of words from other fields is expected – the reader should assume that any and all terms having special meanings in a legal context will be included.

In style, the eighth edition, echoing and improving the seventh, is concise and reflective of modern usage. In the seventh edition, preemption replaced pre-emption, and the word’s definition was expanded to include not only its constitutional sense, but also commercial and real property senses. For the constitutional sense, the definition was simplified. From, in the fifth edition, “doctrine adopted by the U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws pre-empt or take precedence over state laws” to, in the seventh and eighth editions, “the principle (derived from the Supremacy Clause) that a federal law can supersede or supplant any inconsistent state law or regulation,” the revised definition both identifies the source of the principle, and clarifies its import.

3. “Dictionaries are forced to carry far more weight than they were or could be designed to bear …”

What do the Hong Kong Polytechnic University, the Fargo Public Library, the Canada Customs and Revenue Agency, the United States Institute of Peace, the Xerox Corporation, the US Army Corps of Engineers, and the Arnold & Porter law firm all have in common? They are among the thousands of institutions around the world that include in their library collections a copy of Black’s Law Dictionary. If asked to assess the relevance of Black’s and the extent to which it has fulfilled its purposes, one response might be – res ipsa loquitor (in its Latin, not legal, sense, as defined by Black’s). The dictionary’s ubiquity is evidenced by its presence in libraries and institutions of all different ilks and locations. The dictionary has been in existence for more than 110 years, is in its eighth edition, and has been translated into (of all languages) Urdu. As a current and comprehensive dictionary of American legal terms, and as a standard reference work, Black’s is simply unrivaled.

Early editions of Black’s (perhaps as a testament to its novelty, if nothing else) were reviewed in major law journals. Although reviews of the seventh and eighth editions have

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Law Dictionary, 8th ed.
32 Black, Black’s Law Dictionary, 5th ed., III.
33 Ibid., 1060.
37 Qanuni, Angrezi-Urdu Iughat: Blaiks la’ dikshanari se makhubz (Islamabad: Muqtadirah-yi Qaumi Zaban, 2002).
appeared in some law journals, the premier publications of legal scholarship have not included reviews of recent editions of Black’s. This may speak more to the acceptance of Black’s than anything else.

But the relevance of dictionaries in general, and of Black’s in particular, to modern jurisprudence is best illustrated by the attention given to those works by American courts, most notably the US Supreme Court. Samuel Thumma and Jeffrey Kirchmeier, in an exhaustive study of the use of dictionaries by the Court, note that the Supreme Court first explicitly authorized reliance on a dictionary in 1920: “We deem it clear, beyond question – that the court was justified in taking judicial notice of facts that appeared so abundantly from standard works accessible in every considerable library.”

If the standard for a dictionary’s authority is its presence in ‘considerable’ libraries, then Black’s surely passes the test. And, the Supreme Court has agreed, citing all editions of Black’s over 130 times, for definitions of terms as diverse as in, shall, cold blood, stare decisis, avoid, attorney, right, willful, necessary, tidelands, color, and moral turpitude. Although the Court’s increased reliance on dictionaries has been criticized (as has the tendency of individual members to select among definitions which best suit particular purposes), the fact that dictionaries play an ever more important role in modern jurisprudence can’t be ignored.

4. “In about equal measure, I’m a lawyer, lexicographer, an author, a grammarian, and a teacher” So, Black’s eighth edition fulfills its purpose; it improves upon and enhances the work of Garner’s predecessors; and its relevance to

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44 Bryan Garner, quoted in Dorothy F. Easley, “Editor’s Column: Bryan Garner Counsels Appellate Lawyers and Judges on Effective Legal Writing,” XIII The Record: Journal of the Appellate Practice Section 20, 21 (Florida Bar, 2005).
students, the lay public, practitioners, the judiciary, and, to a lesser extent, scholars, can be demonstrated. But, other than all that, what’s so special about it? What makes it merit attention apart from its very practical usefulness? The answer lies less in the content of the dictionary, and more in its style and in the approach undertaken by its editor.

In reviewing Garner’s tome on American usage, David Foster Wallace argued that it’s no longer enough for a lexicographer to satisfy the two canons of comprehensiveness and completeness. Additionally, the lexicographer must be “credible.” And, Wallace found Garner to be eminently credible, characterizing him as an authority “not in an autocratic sense, but in a technocratic sense.”

The preface to the eighth edition evidences Garner’s approach to his undertaking – his goal is to “marshal legal terms to the fullest extent possible and to define them accurately.” It’s the approach of a military man – one committed to a well-conceived plan and who rigorously implements that plan in an orderly, if not fastidious, manner. After all, the eighth edition appears a mere five years following the seventh edition. In that five years, some 17,000 terms have been added; that’s 3400 words each year, 65 words per week, 13 words each day (with only weekends off). Garner has the zeal of a missionary coupled with the discipline of a conqueror, and it is this combination of devotion, single-mindedness, and rigor that distinguishes the dictionary.

Garner’s confidence in his mastery of the subject and his approach to dictionary-building reminds us of Henry Black. Black was not hesitant to create a definition out of whole cloth; there are entries in his original work “which the definition had to be written entirely de novo.” Garner is more constrained – one suspects that he is loathe to define a word without sources (although those sources are often not mentioned). His confidence in his ability to identify reliable, succinct, and persuasive authorities for his definitions enables him to fairly radically overhaul both the content and the format of a work now in its eighth edition. Garner knows that his reader will recognize and accept the authority of Blackstone and Charles Alan Wright; Garner also acknowledges that Glanville Williams and Rollin Perkins (sources credited for definitions in criminal law and jurisprudence) are much less well known. But Garner has no hesitation citing those latter authorities; in his estimation, “their work deserves more widespread attention.”

Legend has it that even in law school at the University of Texas, Garner kept his definition note cards close at hand, routinely noting word use and authority. Those entries, meticulously supplemented over the years, formed the basis for Garner’s approach to his editorship of Black’s – a judgmental hand applied to exhaustive research and thorough analysis. Garner is credible because of the logic of his approach, his thoroughness, and his absolute faith in both his mission and its product. The content of a dictionary should withstand criticisms of subjectivity; Garner’s eighth edition does because of its reliance on authority. But, the style of a dictionary need not be bland or indistinct; recognition of the stamp of its editor makes a dictionary more interesting, and, if that stamp of individuality is emphatic in its authority, the dictionary is all the more useful and relevant not simply as a mere ‘word book,’ but as a well-

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47 Black, A Dictionary of Law iv (1891).
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considered, scholarly, and contemporary re-

flection of our language.

We suspect that the character of the
eighth edition reflects the personality of its
editor. What is distinctive and unique about
that character (and personality) enables the
eighth edition to fulfill its purposes so ef-
fectively. The dictionary is strong, consistent,
and emphatic; it backs up its claims with
ample authority, and it discourages dissent.
Language may, indeed, express the distinc-
tive quality of a people; a good dictionary
necessarily reflects the distinctive qualities
of its editor. And, we can be thankful that
Bryan Garner’s character is reflected in the
eighth edition. 49

49 “Language expresses the special, distinctive quality of a people, and a people, like an individual, is to a
large extent defined by its past – its traditions – whether it is conscious of this or not.” Macdonald, The
New Yorker, March 10, 1962, 159.