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# BOOK REVIEW

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# The Dictionary and the Man: The Eighth Edition of *Black's Law Dictionary*, Edited by Bryan Garner

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Bryan Garner is a man with a mission: a dictionarian,<sup>1</sup> if not a dictioneer.<sup>2</sup> Garner, in again updating and revising the "standard U.S. law dictionary,"<sup>3</sup> seeks not only to accurately define a comprehensive list of legal terms, but more fundamentally, to elevate legal scholarship.<sup>4</sup> It is 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 is Bryan Garner.

Most of us think of dictionaries as handy reference tools, to be consulted when all else fails. In 1910, a reviewer of the second edition of *Black's Law Dictionary (Black's)*<sup>5</sup> was clearly in desperate straits when the book arrived to his rescue: "We 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."<sup>6</sup> And, as practical tools to students and scholars alike, legal

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1. THE OXFORD ENGLISH DICTIONARY 625 (2d ed. 1989) ("The maker of a dictionary; a lexicographer.").
2. *Id.* at 626 ("One who makes it his business to criticize diction or style in language.").
3. ROBERT BALAY, GUIDE TO REFERENCE BOOKS 1116 (11th ed. 1996).
4. BLACK'S LAW DICTIONARY ix (8th ed. 2004) ("[The eighth edition] continues the effort begun with the seventh edition: . . . to raise the level of scholarship through serious research and careful reassessment.").
5. BLACK'S LAW DICTIONARY (2d ed. 1910).
6. Book Review, 5 NW. U. L. REV. 582 (1911) (reviewing BLACK'S LAW DICTIONARY (2d ed. 1910)).

dictionaries are well-used. However, 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 a 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,"<sup>7</sup> 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 intended for a wide audience. Unlike *Bouvier's*<sup>8</sup> and *Ballantine's*,<sup>9</sup> which have not been updated in decades, *Black's* is supported by the West/Thomson legal publishing behemoth and benefits from the resources that publisher provides. As the sole remaining current example of a long legacy of American legal dictionaries, 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.

We might choose any number of criteria for an evaluation of the eighth edition.<sup>10</sup> What is most important in assessing its value, though, both as a reference tool and as a work of scholarship, is how well it fulfills its purposes. Garner has set lofty purposes indeed. The eighth edition fulfills its 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.

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7. Ellen P. Aprill, *The Law of the Word: Dictionary Shopping in the Supreme Court*, 30 ARIZ. ST. L.J. 275, 284 (1998) (quoting JONATHAN GREEN, CHASING THE SUN: DICTIONARY MAKERS AND THE DICTIONARIES THEY MADE 16 (1996)). Aprill stated, "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.'" *Id.* (emphasis added).

8. BOUVIER'S LAW DICTIONARY (Century ed. 1934).

9. BALLENTINE'S LAW DICTIONARY (3d ed. 1969).

10. See, e.g., Norman Stevens, *Evaluating Reference Books in Theory and Practice*, 15 REFERENCE LIB. 9, 13–15 (1986) (listing criteria suggested by reviewers of reference works, including accuracy, appropriateness, arrangement, authority, bibliography, comparability, completeness, content, distinction, documentation, durability, ease of use, illustrations, index, level, reliability, revisions, and uniqueness).

1. "The business of the lexicographer is . . . to do what . . . cannot be done . . . ." <sup>11</sup>

It is well to distinguish between the purpose of a dictionary (and a law dictionary, at that) and the intent behind the individual definitions that make up the dictionary as a whole. 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"<sup>12</sup>), the line between "completeness and madness"<sup>13</sup> is a very hard one to draw.

To define is to set limits.<sup>14</sup> While other endeavors encourage creativity in word use, the law does not. Though e.e. cummings (a format which would be recognized by none of the Bluebook, the Maroonbook, the Greenbook, or ALWD<sup>15</sup>) might write of the "pale club of the wind"<sup>16</sup> and Ben Okri of "an eternal smile of riddles,"<sup>17</sup> we do not 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"<sup>18</sup> (now a fairly common use of the word). Though it might be appropriate for a general language dictionary to reflect this meaning of the word (and the eleventh edition of *Webster's Collegiate* does<sup>19</sup>), there is no corresponding need for that sense in a legal dictionary. It is irrelevant. The "legal" definition of "mother" has certainly

11. Aprill, *supra* note 7, at 296 (quoting Lawrence Solan, *When Judges Use the Dictionary*, 68 AM. SPEECH 50, 53 (1993)).

12. Henry Campbell Black, 5 HARV. L. REV. 155, 155 (reviewing BLACK'S LAW DICTIONARY (1st ed. 1891)) ("The first canon of lexicography relates to substance: A dictionary must be comprehensive; the second, to form: A dictionary must be convenient.").

13. See Dwight Macdonald, *The String Untuned*, NEW YORKER, Mar. 10, 1962, at 145 (reviewing WEBSTER'S NEW INTERNATIONAL DICTIONARY (UNABRIDGED) (3d ed. 1961)) ("One of the problems of an unabridger is where completeness ends and madness begins.").

14. See *id.* at 150 ("It is a dictionary's job to define words, which means, literally, to set limits to them.").

15. See generally THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000); THE UNIVERSITY OF CHICAGO MANUAL OF LEGAL CITATION (1989); TEXAS LAW REVIEW ASS'N, TEXAS RULES OF FORM (10th ed. 2003); ASS'N OF LEGAL WRITING DIRECTORS, ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (2d ed. 2003).

16. E.E. CUMMINGS, I HAVE FOUND WHAT YOU ARE LIKE, available at <http://www.americanpoems.com/poets/eecummings/11921> (last visited Nov. 12, 2005).

17. BEN OKRI, THE FAMISHED ROAD 263 (1991).

18. See *Remarks by Hussein to Troops on Kuwait*, N.Y. TIMES, Jan. 7, 1991, at A10 ("[T]he battle in which you are locked today is the mother of all battles." (quoting Sadaam Hussein)).

19. See MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 810 (11th ed. 2003) ("mother . . . 5: something that is an extreme or ultimate example of its kind esp. in terms of scale.").

evolved (from "a woman who has borne a child"<sup>20</sup> in *Black's* fifth edition, to a "woman who has given birth to, provided the egg for, or legally adopted a child"<sup>21</sup> in the eighth edition), but that evolution has been supported (and authorized) by the judiciary, legal scholars, scientists, and practicing attorneys.

The prescriptivist/descriptivist debate<sup>22</sup> loses some relevance in the context of a law dictionary. Law, and more specifically, the rituals and mechanisms through which it is pronounced, invests words (and their senses) with legitimacy and authority; it is the obligation of the law dictionary to reflect those meanings and evidence the authority supporting them. The law encourages predictability and certainty, and the definitions within a legal dictionary ought to reflect the notion that words have established meanings in a legal sense. What distinguishes a law dictionary from a mere "word book" (as the *New York Times* once dismissed *Webster's* third edition<sup>23</sup>) is its marshaling 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, in that *legal* context, and what is not.

Though many definitions in the eighth edition of *Black's* are enhanced by West key number references, cross-references to *Corpus Juris Secundum*, and quotations from recognized authorities, some definitions are not so supported by evidence of their use.<sup>24</sup> 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"<sup>25</sup> develop, and, in what scenarios can someone be said to exercise "due influence"?).<sup>26</sup>

And how is legal slang to be addressed? The eighth edition includes any number of examples of law slang absent in prior editions. For these new

20. BLACK'S LAW DICTIONARY 913 (5th ed. 1979).

21. BLACK'S LAW DICTIONARY 1035 (8th ed. 2004).

22. See Macdonald, *supra* note 13, at 145 (discussing the prescriptivist and descriptivist perspectives on dictionary making).

23. See Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court's Use of Dictionaries*, 47 BUFF. L. REV. 227, 243 (1999) ("The *New York Times*, at least for a time, refused to call *Webster's Third* a dictionary, instead referring to it as a 'word book.'").

24. See generally BLACK'S LAW DICTIONARY (8th ed. 2004).

25. See *id.* at 583 ("The doctrine that a profession is not liable to a client for advice or an opinion given in good faith and with an honest belief that the advice was in the client's best interests . . .").

26. See *id.* at 538 ("The sway that one person has over another, esp. as a result of persuasion, argument or appeal to the person's affections.").

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 \$10,000"?<sup>27</sup> Though Garner notes that the term has its origins in a blue cartoon character,<sup>28</sup> he does not give any sources for his definition or any reason why the short blue cartoon character is somehow related to money-laundering. Similarly, the more familiar term "stool pigeon" appeared for the first time in Garner's eighth edition. And, while the definition is certainly sound, there is no indication of the derivation of the phrase.<sup>29</sup>

But these are minor quibbles. More interesting are those words that resist concise definition. In his 1933 review of *Black's* third edition, Alexander Hamilton Frey bemoaned the efforts of legal lexicographers to "define . . . 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 [and to] arrive at a concise crystallized definition."<sup>30</sup> Frey longed for "an honest law dictionary . . . in which the editor does not hesitate to discuss where definition is fatuous."<sup>31</sup>

Definitions create categories; concepts either fall within those categories (and therefore 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 within them. The "easy" members of a category clearly satisfy those conditions; the outliers, occurring at the "fuzzy" edges of the category cause more problems.<sup>32</sup> A robin is obviously a good example of a bird, a penguin less so.<sup>33</sup> 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,"<sup>34</sup> and, second, as "any external thing over which the rights of possession, use and

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27. *Id.* at 1423.

28. *Id.*

29. *Id.* at 1459 ("(1) An informant, esp. a police informant.").

30. Alexander Hamilton Frey, 82 U. PA. L. REV. 886 (1934) (reviewing BLACK'S LAW DICTIONARY (3d ed. 1933)).

31. *Id.* at 887.

32. See Note, *Looking It Up: Dictionaries and Statutory Interpretation*, 107 HARV. L. REV. 1437, 1451 (1994) ("Words are fuzzy at the margins . . . [T]he conditions for membership in a word category 'are not always readily accessible by intuition.'" (quoting Solan, *supra* note 10, at 53)).

33. GEORGE LAKOFF, *WOMEN, FIRE, AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND* 56 (1987) (referring to the "bird" category). For a general discussion of basic level categories and prototypical category members, see *id.* at 1–156.

34. BLACK'S LAW DICTIONARY 1252 (8th ed. 2004).

enjoyment are exercised."<sup>35</sup> 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 forty-eight related terms that incorporate the word "property" (e.g., "lost property," "intellectual property," "mislaidd property," "real property," and "wasting property"), and that evidence the evolution of the concept, follow Garner's succinct definitions of the word.<sup>36</sup> Multivolume 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.

Unlike books written on style and usage (legal or otherwise)—which, as David Foster Wallace has pointed out, are of most interest to those who need them least<sup>37</sup>—dictionaries are used frequently, in a variety of situations, and by very different individuals. How is it possible to satisfy the first year law student or layperson, as well as the judge, the legal academic, and the practicing lawyer? For the law student or layperson, the legal dictionary is much like a bilingual dictionary,<sup>38</sup> introducing the student to words never before encountered, to words whose legal meanings are very different from their common ones, and to words whose use in a legal context are replete with nuances not obvious to those not versed in law. After all, as the introduction to a dictionary published in 1661 noted, dictionaries are "very useful for all such as desire to understand what they read."<sup>39</sup>

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35. *Id.*

36. *Id.* at 1252–55.

37. David Foster Wallace, *Tense Present: Democracy, English, and the Wars over Usage*, HARPER'S MAG., Apr. 2001, at 39, 40.

38. MORRIS L. COHEN, ROBERT C. BERRING & KENT C. OLSON, HOW TO FIND THE LAW 412 (9th ed. 1989) ("You are outlanders in this country of the law. You do not know the speech. It must be learned. Like any other foreign tongue, it must be learned: by seeing words, by using them until they are familiar; meantime, by constant reference to the dictionary. . . ." (quoting KARL LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY 39 (1981))). As an aside, we should note that there are any number of bilingual and multilingual legal dictionaries. Gerard-Rene de Groot and Conrad J.P. van Laer have published an annotated and critical bibliography of bilingual and multilingual legal dictionaries. GERARD-RENE DE GROOT & CONRAD J.P. VAN LAER, BILINGUAL AND MULTILINGUAL LEGAL DICTIONARIES IN THE EUROPEAN UNION: A CRITICAL BIBLIOGRAPHY, <http://arno.unimaas.nl/show.cgi?fid=3130> (last visited Nov. 17, 2005).

39. GLOSSOGRAPHIA: OR A DICTIONARY, INTERPRETING ALL SUCH HARD WORDS OF WHATSOEVER LANGUAGE, NOW USED IN OUR REFINED ENGLISH TONGUE (Thomas Blount ed., 2d ed. 1661) ("Very useful for all such as desire to understand what they read. . . .")

The eighth edition contains definitions of over 40,000 terms, an increase of 17,000 terms over the seventh edition.<sup>40</sup> The student will find comfort in understanding that property is a right,<sup>41</sup> that libel must be expressed in a fixed medium,<sup>42</sup> and that the Sherman Act pertains to antitrust.<sup>43</sup> The layperson will welcome the concise explanation of a wraparound mortgage<sup>44</sup> or even of a denial of service attack.<sup>45</sup> The practitioner venturing outside his area of expertise may turn to the definition of "debtor's examination"<sup>46</sup> to find citations to sections of the Bankruptcy Code and to the federal rules of bankruptcy procedure.<sup>47</sup> The scholar, in addition to noting the forty-eight terms related to "property," will appreciate citations to cases that establish the Shively presumption,<sup>48</sup> the comparativist to the description of mahr.<sup>49</sup> And, the historian will revel in definitions of "deodand,"<sup>50</sup> "the Mad Parliament,"<sup>51</sup> "livery in chivalry,"<sup>52</sup> and "parapherna."<sup>53</sup> If words are the weapons of a lawyer,<sup>54</sup> the eighth edition provides reliable and abundant ammunition.

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40. Paul Hellyer, *Keeping up with New Legal Times*, 97 LAW LIBR. J. 158, 158-59 (2005) (reviewing BLACK'S LAW DICTIONARY (8th ed. 2004)).

41. BLACK'S LAW DICTIONARY 1252 (8th ed. 2004).

42. *Id.* at 935.

43. *Id.* at 1410.

44. *Id.* at 1033.

45. *Id.* at 466.

46. *Id.* at 434.

47. *Id.*

48. *See id.* at 1411-12 ("The doctrine that any pre-statehood grant of public property does not include tidelands unless the grant specifically indicates otherwise.").

49. *See id.* at 971 ("*Islamic law*. A gift of money or property that must be made by a man to the woman he marries.").

50. *See id.* at 467 ("Something (such as an animal) that has done wrong and must therefore be forfeited to the Crown.").

51. *See id.* at 969 ("In 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.").

52. *See id.* at 953 ("The delivery of possession of real property from a guardian to a ward in chivalry when the ward reached majority.").

53. *See id.* at 1143 ("Property of a wife not part of her dowry . . . a married woman's personal property. . . .").

54. Dan Henke, Book Note, 65 A.B.A. J. 1378, 1379 (1979) ("Words are a lawyer's best weapons and when properly used add to effectiveness and profits." (reviewing BLACK'S LAW DICTIONARY (5th ed. 1979))).



2. "Words come into being, do service, and pass away, as really as bodies . . . ."55

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*.<sup>56</sup> 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.<sup>57</sup>

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*.<sup>58</sup> 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*.<sup>59</sup>

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,"<sup>60</sup> "praesumitur pro negante,"<sup>61</sup> "steganography"<sup>62</sup>). New words and terms have been added—some terms we

55. William C. Anderson, Note, *Law Dictionaries*, 28 AM. L. REV. 531, 532 (1894).

56. BLACK'S LAW DICTIONARY (1st ed. 1891).

57. BLACK'S LAW DICTIONARY (2d ed. 1910).

58. BLACK'S LAW DICTIONARY (4th ed. 1951); BLACK'S LAW DICTIONARY (5th ed. 1979); BLACK'S LAW DICTIONARY (6th ed. 1990).

59. BLACK'S LAW DICTIONARY (7th ed. 1999); BLACK'S LAW DICTIONARY (8th ed. 2004).

60. BLACK'S LAW DICTIONARY 501 (8th ed. 2004).

61. See *id.* at 1213 ("This is the rule of the House of Lords when the votes are equal on a motion.").

62. See *id.* at 1453 (noting that it is a "cryptographic method").

would expect, given our times and new developments in the law: "denial of service attack,"<sup>63</sup> "same-sex marriage,"<sup>64</sup> "cyberpiracy,"<sup>65</sup> and "veggie-libel law."<sup>66</sup> But the eighth edition also includes, for the first time, terms like "ethnic cleansing"<sup>67</sup> and "zero-tolerance policy,"<sup>68</sup> words that are familiar to us in more than one context, but whose sense in a legal context is much harder to articulate.

Since even the first edition of *Black's*, its editors have been conscious of the encroachment of vocabulary from other fields into the discipline of law. The second edition noted in its title that definitions would include "terms of medical jurisprudence";<sup>69</sup> and a reviewer noted in 1910 that

[t]he task of the compiler of a law dictionary becomes more difficult in geometric progression year by year, as the scope, aim and study of the law are broadened to include the rapidly-increasing bulk of human knowledge; for the law reaches out and bodily assimilates many of the sciences akin to it.<sup>70</sup>

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."<sup>71</sup> 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 seventh and eighth editions are concise and reflective of modern usage. "Preemption" replaced "pre-emption,"<sup>72</sup> and the word's definition expanded to include not only the constitutional sense but also commercial and real property senses.<sup>73</sup> For the constitutional sense, the definition was simplified. From, in the fifth edition, "doctrine adopted by 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

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63. *Id.* at 466.

64. *Id.* at 1368.

65. *Id.* at 414.

66. *Id.* at 1589.

67. *Id.* at 592.

68. *Id.* at 1649.

69. BLACK'S LAW DICTIONARY (2d ed. 1910).

70. Clement R. Wood, Book Note, 20 YALE L.J. 423 (1911).

71. BLACK'S LAW DICTIONARY iii (5th ed. 1979).

72. BLACK'S LAW DICTIONARY 1177 (6th ed. 1990).

73. BLACK'S LAW DICTIONARY 1197 (7th ed. 1999).

laws"<sup>74</sup> 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,"<sup>75</sup> the revised definition both identifies the source of the principle and clarifies its import.

The U.S. Constitution<sup>76</sup> and a table of British regnal years<sup>77</sup> have long been included as appendices to *Black's*. The eighth edition includes the Universal Declaration of Human Rights,<sup>78</sup> a Federal Circuits map,<sup>79</sup> and a thirteen page bibliography,<sup>80</sup> citing sources as diverse as *Safire's New Political Dictionary* (1993),<sup>81</sup> *Contracts in a Nutshell* (1984),<sup>82</sup> *The Duty to Act* (1977),<sup>83</sup> and *A Treatise on the Nature, Principles and Rules of Circumstantial Evidence* (1868).<sup>84</sup>

In reviewing (not altogether favorably) the third edition of *Webster's* in 1966, Dwight Macdonald suggested that "language expresses the special, distinctive quality of a people, and a people, like an individual, is to large extent, defined by its past."<sup>85</sup> *Black's* eighth edition reflects the current language of the law and of lawyers; as Macdonald suggested, that language, and the dictionary that records it, reflects, through citation, the events and individuals that contributed to the state of the law as it exists today.

3. "Dictionaries are forced to carry far more weight than they were or could be designed to bear . . . ."<sup>86</sup>

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 U.S. Army Corps of Engineers, and the Arnold &

74. *Id.* at 1060.

75. BLACK'S LAW DICTIONARY 1197 (7th ed. 1999); BLACK'S LAW DICTIONARY 1216 (8th ed. 2004).

76. *E.g.*, BLACK'S LAW DICTIONARY app. at 1703–15 (7th ed. 2000).

77. *E.g.*, *id.* app. at 1727.

78. BLACK'S LAW DICTIONARY 1783 (8th ed. 2004).

79. *Id.* at 1793.

80. *Id.* at 1797–1809.

81. *Id.* at 1808.

82. *Id.*

83. *Id.*

84. *Id.* at 1798.

85. Macdonald, *supra* note 13, at 159.

86. *Looking It Up*, *supra* note 32, at 1449.

Porter law firm all have in common?<sup>87</sup> 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*).<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> Although reviews of the seventh and eighth editions have appeared in a number of journals,<sup>91</sup> the premier publications of legal scholarship have not included reviews of recent editions of *Black's*.<sup>92</sup> This may speak more to the acceptance of *Black's* than anything else.

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87. To compose this list, the online databases of OCLC Worldcat, <http://www.oclc.org/worldcat/> (last visited April 1, 2006) and RLG, <http://www.rlg.org/index.php> (last visited April 1, 2006) were consulted. A subscription is required for either service.

88. BLACK'S LAW DICTIONARY 1336 (8th ed. 2004) ("res ipsa loquitor: . . . [Latin 'the thing speaks for itself']").

89. *Qanuni, Angrezi-Urdu Iughat: Blaiks la' dikshanari se makhuz* (2002) (published by Islamabad: Muqtadirah-yi Qaumi Zaban).

90. Some reviews of the first edition include: Henry Campbell Black, 5 HARV. L. REV. 155 (1891–1892); Eli R. Sutton, Book Note, *A Dictionary of Law, Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 1 MICH. L.J. 38 (1892); Book Note, 1 CORNELL L.J. 105 (1894); Book Note, 1 YALE L.J. 88 (1891–1892). Reviews of the second edition include: Clement R. Wood, Book Note, 20 YALE L.J. 423, 423–24 (1911–1912); Jame B. Lichtenberger, Book Note, 59 U. PA. L. REV. 355, 355–56 (1910–1911); Book Note, 9 MICH. L. REV. 455, 455 (1910–1911); Book Note, 23 GREEN BAG 197, 197 (1911). Reviews of the third edition include: Arthur A. Alexander, Book Note, 22 GEO. L.J. 657, 657–58 (1933–1934); Alexander Hamilton Frey, Book Note, 82 U. PA. L. REV. 886, 886–87 (1933–1934); Book Note, 20 VA. L. REV. 493, 493 (1933–1934); Book Note, 47 HARV. L. REV. 170 (1933–1934).

91. See generally Richard Sloane, *Book Review: Black's Law Dictionary*, 11 U. TOL. L. REV. 322 (1980); Henke, *supra* note 54; Hellyer, *supra* note 40.

92. General purpose dictionaries have not been widely reviewed in the past few decades. But, with the 250th anniversary of the first publication of SAMUEL JOHNSON, A DICTIONARY OF THE ENGLISH LANGUAGE (1773), occurring on April 15, 2005, a flurry of articles and books relating to Johnson's dictionary have appeared. Some of the most entertaining (and informative) of those articles are Henry Hitchings, *The Word According to Dr. Johnson*, FIN. TIMES, Apr. 2/3, 2005, at W4; Sarah Burton, *A Treasure House of Words and More*, THE SPECTATOR, Apr. 9, 2005, at 37 (reviewing HENRY HITCHINGS, DR. JOHNSON'S DICTIONARY: THE EXTRAORDINARY STORY OF THE BOOK THAT DEFINED THE WORLD (2005)); Verlyn Klinkenborg,

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 United States 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 order to understand the meaning of particular terms in 1920.<sup>93</sup> The Court stated, "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."<sup>94</sup>

If the standard for a dictionary's authority is its presence in "considerable" libraries, then *Black's* surely passes the test. And, the 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," "wilful," "necessary," "tidelands," "color," and "moral turpitude."<sup>95</sup> Although the Court's increased reliance on dictionaries has been criticized, as has the tendency of individual Justices to select among definitions those which best suit particular purposes, the fact that dictionaries play an ever more important role in modern jurisprudence cannot be ignored. That alone indicates not only the relevance of the dictionary (and the relevance of *Black's* as by far the most frequently cited law dictionary), but also the need for greater scholarly attention to the dictionary and its accuracy.<sup>96</sup>

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*Johnson's Dictionary*, N.Y. TIMES, Apr. 17, 2005, at sec. 4, p. 13. In a *New York Times* op-ed piece, Jack Lynch noted that

[s]ince 1785, according to federal court records, American lawyers and legal scholars have been using [*Johnson's Dictionary*] to unpack the meanings of our founders' most important documents. In the last few years, Justices Ruth Bader Ginsburg, John Paul Stevens, Clarence Thomas and Chief Justice William H. Rehnquist of the Supreme Court have quoted Johnson in their opinions.

Jack Lynch, Op-Ed., *Dr. Johnson's Revolution*, N.Y. TIMES, July 2, 2005, at A15.

93. See Thumma & Kirchmeier, *supra* note 23, at 244–301 (noting that "the Court had decided that taking judicial notice of dictionary definitions unquestionably was proper").

94. *Werk v. Parker*, 249 U.S. 130, 132–33 (1919).

95. Thumma & Kirchmeier, *supra* note 23, at 251–60.

96. In addition to the 1999 Thumma and Kirchmeier article, Joseph Miller and James Hilsentger have very recently commented on the use of dictionaries in patent cases. See generally Joseph Scott Miller & James A. Hilsentger, *The Proven Key: Roles and Rules for Dictionaries at the Patent Office and the Courts*, 54 AM. U. L. REV. 829 (2005).

Two recent cases, one at the trial court level, *Ryan v. City of New York*, 802 N.Y.S. 2d 854, 857 (N.Y. Sup. Ct. 2005), and the second in the Court of Appeals for the Federal Circuit, *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), highlight other courts' reactions to reliance on dictionary definitions. *Ryan* involved two police officers who had sued the City of New York; the judge set aside the jury's verdict after learning that the jury consulted a dictionary to determine the meaning of "preponderance." See *Ryan*, 802 N.Y.S. 2d at 857 ("The

4. "In about equal measure, I'm a lawyer, lexicographer, an author, a grammarian, and a teacher."<sup>97</sup>

So, *Black's* eighth edition fulfills its purpose; it improves upon and enhances the work of Garner's predecessors; and its relevance to students, the lay public, practitioners, the judiciary, and to a lesser extent, scholars, can be demonstrated. But, other than all that, why is it so special? 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,<sup>98</sup> David Foster Wallace argued that it is no longer enough for a lexicographer to satisfy the two canons of comprehensiveness and completeness. Additionally, the lexicographer must be "credible."<sup>99</sup> And, Wallace found Garner to be eminently credible, characterizing Garner as an authority "not in an *autocratic* sense, but in a *technocratic* sense."<sup>100</sup> 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."<sup>101</sup> It is 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 publication of the seventh edition. But, in that five year span, some 17,000 terms have been added; that's 3,400 words each year, 65 words per week, and 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.

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reading of the dictionary definition of 'preponderance,' with its various differences from the definition in the court's charge on the law, creates a sufficient likelihood that plaintiffs were prejudiced."). In *Phillips*, a patent case, the Federal Circuit Court of Appeals discounted the value of dictionary definitions in deciding patent claims. See *Phillips*, 415 F.3d at 1321 ("The main problem with elevating the dictionary to such prominence is that it focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent.").

97. Bryan Garner, quoted in Dorothy F. Easley, *Editor's Column: Bryan Garner Counsels Appellate Lawyers and Judges on Effective Legal Writing*, *The Record*, J. APP. PRAC. SECTION, Winter 2005, at 20, 21 (interviewing Bryan Garner concerning his experiences in appellate practice), available at <http://www.flabarappellate.org/asp/record.asp>.

98. Wallace, *supra* note 37, at 39–58.

99. *Id.* at 58.

100. *Id.*

101. BLACK'S LAW DICTIONARY 39 (8th ed. 2004).

Garner's confidence in his mastery of the subject and his approach to dictionary-building remind us of Henry Black. Black felt no compunction to mindlessly mimic the language of judicial opinions "where, in any instance, in his judgment a better definition could be found in treatises of acknowledged authority or could be framed by adaptation in rearrangement."<sup>102</sup> Black was not hesitant to create a definition out of whole cloth; there are entries in his original work for "which the definition had to be written entirely de novo."<sup>103</sup> Garner is more constrained—one suspects that he would be loathe to define a word without sources (although those sources are often not mentioned). Yet 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)<sup>104</sup> are much less well known. But Garner has no hesitation in citing those latter authorities; in his estimation, "their work deserves more widespread attention."<sup>105</sup>

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 usage 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 so 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-considered, scholarly, and contemporary reflection 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 effectively. The dictionary is strong, consistent, and emphatic; it backs up its claims with ample

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102. Book Review, 1 MICH. L.J. 39 (1892) (reviewing BLACK'S LAW DICTIONARY (1st ed. 1891)).

103. BLACK'S LAW DICTIONARY (1st ed. 1891).

104. BLACK'S LAW DICTIONARY x (7th ed. 1999).

105. *Id.*

authority, and it discourages dissent. Language may, indeed, express the distinctive quality of a people;<sup>106</sup> 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.

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106. See Macdonald, *supra* note 13, at 159 ("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.").