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Introduction to Law, Language and Values

1. Central learning goals

The University of Southern California Law School’s first-year course, Law, Language and Values (LL&V), pursues three central learning goals.

1. Students learn how to identify issues that arise in statutory interpretation cases, distinguish issues whose answers are relatively straightforward (“easy cases”) from issues on which reasonable minds can differ (“hard cases”), and make arguments responsive to the sources of difficulty in hard cases. These skills are foundational to study of courses—such as Criminal Law, Business Organization, and Environmental Law—that you will take next semester or in subsequent years, because these courses feature arguments about the meaning of state and federal statutes. Training in statutory interpretation will also be very helpful this semester in Civil Procedure, because the Federal Rules of Civil Procedure, while not technically a statute, are often interpreted like one. Moreover, familiarity with interpretive methods such as textualism, intentionalism, and purposivism, supports students’ subsequent encounter with constitutional interpretation, because to decide whether a statute is constitutional, it is first necessary to interpret it. In summary: upon completing LL&V, students have acquired basic skills in statutory interpretation which they will exercise further in much of their subsequent studies.

2. Students learn to identify ways in which the structure of a legal argument includes moral or policy reasons. Moral or policy reasons, and normative reasons generally, may be made relevant by words or phrases in the legal text (“cruel punishments,” “unreasonable searches and seizures”), or by doctrine (“best interests of the child,” “reasonable precautions”), or by failure to resolve the issue on other grounds. Students also identify and gain experience in articulating normative reasons for giving a text one interpretation rather than another, for construing the holding or holdings in previously decided cases, and for setting the boundaries and goals of institutional roles such as those of the trial court, jury, and appellate court. Even seemingly unremarkable things, such as perceptions and reports of observations, may harbor or reflect values and appraisals. In summary: upon completing LL&V, students have acquired basic skills in noticing and revealing points at which a legal argument depends on a stated or unstated normative premise or belief.

3. Students learn how to articulate normative reasons as part of the structure of a legal argument, and to evaluate such reasons with a critical eye. To this end, LL&V provides an introduction to law and economics, which is one of
the most prominent and influential frameworks for legal policy analysis. Upon completing LL&V, students are able to make and respond to arguments framed in terms of efficiency, cost-benefit analysis, and incentives. LL&V introduces the functions of markets and ways in which legal policy structures or mimics markets, while also introducing concepts such as externalities and information costs that explain why the free unregulated exchange of goods and services does not always advance efficiency. LL&V also introduces students to some of the main lines of criticism of law-and-economics approaches to legal policy analysis and to normative frameworks organized around the principle of equal concern and respect for the rights of persons. Finally, LL&V introduces storytelling or narrative-based reasoning, which lays its emphasis on character and community identity rather than on formalized policies or principles. In summary: upon completing LL&V, students have acquired an introductory familiarity with some of the leading economic and non-economic concepts in contemporary legal argument, and a corresponding capacity to advance normative reasons for legal outcomes whenever legal reasoning makes such reasons relevant.

All of these central learning goals, and especially the second and third, also address the “real-time” experience in the first semester of law school of learning the law. LL&V operates not only vertically (as a foundation for later studies) but also horizontally (as an intensifier of current studies). In that respect, all three of the learning goals share a common mission of enabling or empowering the student to bring his or her full faculties to bear on problems and themes that recur across the curriculum. Among these problems and themes, the need to articulate, calibrate, and choose among values—whether one’s own values, or what one takes to be the political community’s, or the client’s, or principles and social goals that make sense of rules and doctrine—stands out as worthy of special attention. Thus, if “L” for “Language” is especially prominent in the first central learning goal, about statutory interpretation, the “V” for “Values” is prominent across all three goals and brings all three into common focus.

2. Method and materials

LL&V employs the case method of instruction. The cases, whether real or hypothetical, are meant to represent a range or spectrum, including both hard issues and easy issues, questions of law and questions of fact (as well as questions that seem to resist easy sorting into “law” and “fact”), trial and appellate cases, common law and statutory cases (with brief occasional notices of constitutional cases), notorious or famous cases (ones that made or could make headlines) and everyday cases. If the coursebook included only “great” or landmark cases decided by the Supreme Court, it would be all too easy to identify the moral or policy side of the question presented, and to offer normative reasons responsive to the question. Students come away from LL&V able to identify points at which normative questions and questions about values arise, even in ordinary cases, and
able to mobilize normative reasons and supporting evidence responsive to such questions.

Materials in the LL&V coursebook make use of concepts and theories in fields as diverse as economics, political science, philosophy, psychology, and history. Such fields provide a valuable source of insight into the core problems of textual interpretation, legal reasoning, and the place of normative reasoning within the law. Not uncommonly, beginning law students are surprised to discover that such fields are prominent not only in a liberal arts college but also in professional school. Many decades ago, in a speech to entering law students, Prof. Karl Llewellyn commented on this phenomenon.

It has seemed to some students in the past that they had come to law school to “learn the law”, and that the law was made up of legal rules and nothing more, and that all other matter was irrelevant, was an arbitrary interference with their proper training for their profession. I have been told by some that social science was for social scientists, in the graduate school; that what law students wanted was the law. I have met with resentment, sometimes bitter, at the so-called cluttering up of our law curriculum with so-called non-legal material. . . . [But] your faculty offers . . . no apology for “cluttering” up the curriculum with such useful data as it can discover as to what law means to those whom it affects. Your faculty knows no other way of making law mean anything. Your faculty welcomes you into a study of law which deals not with words, but with practice, not with paper theory, but with living fact. And if that be treason, make the most of it.1

The interdisciplinarity “treason” of 1930 has long since become orthodoxy at major university law schools.

3. The LL&V tradition at USC

The LL&V tradition began at USC in 1965, when Professor Christopher Stone joined the faculty and together with Prof. William Bishin taught Law, Language and Ethics to first-year students. Their coursebook, Law, Language and Ethics: An Introduction to Law and Legal Method,2 is the spring from which the LL&V tradition flows. Students will find several cases and materials in the LL&V coursebook that were first introduced by Bishin and Stone. But the connections between LL&V and the course created by Bishin and Stone run much deeper than a few shared readings might suggest.

The Bishin and Stone casebook is deeply attentive to questions of integrity and authenticity. How does acting in a role, whether that of friend or lawyer, bear on what I should do? What can or should I do when my roles are in conflict? Is

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2 New York: Foundation Press (1972). The Bishin and Stone coursebook is available in the law library as one of the sources on the LL&V course reserve shelf.
there an ultimate I or me, accountable for the decisions I make in whatever role? Such questions are prominent in the lives, minds and hearts of students newly undertaking the study of law. Such questions get answered, if only tacitly, as students develop habits and dispositions in their everyday study, conversation with classmates, and participation (or non-participation) in class discussion. LL&V, in the tradition of Bishin and Stone, rests on the conviction that it is better to bring these questions into the open and discuss them thoughtfully and critically together in the classroom.

In this respect, Bishin and Stone pressed deeper than did Llewellyn a generation earlier, and touched on more sensitive issues. What are the reasons, perceptions, and judgments that make me what I am today; which of these (say, my capacity for moral reasoning) are engaged as I reason my way through a case contesting parenting rights, employment discrimination, or voting rights; what if my legal reasoning exposes weak points or nerve points in the very reasons and judgments and expectations that make me what I am?

In the first weeks and months of law school, new students are asked challenging questions. Sometimes there are ways to respond to such questions without placing the web of selfhood at risk. Sometimes there is no such line of escape. Often, regardless of how (or whether) one answers the question, doubts and anxious feelings gnaw away at the tender growths of professional identity. Why does the case make me so sad that I find myself in tears? Why am I outraged that the judge could say what he said? I was hurt once just like this plaintiff was hurt. How can they laugh so in class, aren’t they hurting inside too? Why does no one notice or care to mention that the defendant had no education and lived in a trailer, just like my father? Is it really OK for me to become a lawyer, or am I becoming the legislators and the prosecutors and the judges who put my brother in prison?

The challenge for entering law students does not arise from any failure to appreciate that because law is about life and society, all of the disciplines for the study of life and society are highly relevant to law’s study and practice. Whatever may have been the case in Llewellyn’s time, today’s students are ready and eager enough to see how economics, semantics, history, or psychology, can contribute to their growing skills as lawyers. Where they are in crisis, and where they most need and deserve attention and support, is buried deeper in subduction zones where tectonic plates of the personal and professional grind away at one another. The LL&V tradition responds to that friction, sometimes triggering a little seismic event to release the pressure, more often honoring the worth and the tragedy of human existence simply by recognizing how the maturation of life and thought draws us into choices fateful for ourselves and others, choices we can be strong enough to own.
Now, it would be possible to try to isolate these dynamics and speak to them in a way that is wholly unrelated to learning any actual substantive law or lawyering skills. But this would be to deny the terms of the problem. If we are talking about integrity and fulfillment, but are not teaching law, then we are not meeting the problem and the promise where they actually exist. If we are learning law, but not trying to walk together on a path of integrity and fulfillment, then we are not yet really meeting LL&V’s mission and message.

4. Acknowledgments

William Kessler, Daniel Amato, Nicole Creamer and Kevin Crow provided diligent and rigorous research assistance. Christopher Schnieders integrated and formatted the text. Like every product of the academic life of the USC Law School, this course and coursebook reflect the skill and support of the law library and its wonderful research librarians.

The authors of the LL&V coursebook are grateful to Chris Stone, creator and steward, and to Scott Bice, Daria Roithmayr, and Tom Griffith, whose guidance and partnership in the enterprise are deeply appreciated. Over the four and a half decades of the LL&V tradition, many colleagues, including Scott Bice, Ruth Gavison, Michael Moore, Peggy Radin, Catharine Wells, Nomi Stolzenberg, Andrei Marmor, and Gideon Yaffe, have shared in the common work of interpreting that tradition and teaching within it. The authors of the LL&V coursebook are indebted to all of them, and to the students and faculty of the USC Law School. Their suggestions, patience and trust are deeply felt and most gratefully acknowledged.
CHAPTER ONE: STATUTORY INTERPRETATION AND LEGAL REASONING

A. The formal (X/Y) issue formulation

1. Textual interpretation in legal reasoning

Our story begins in Shrewsbury, Massachusetts. The Panera Bread bakery and café’s lease with a local shopping center provided that the owner of the shopping center would not enter into any “agreement or license affecting space in the Shopping Center . . . for a bakery or restaurant reasonably expected to have annual sales of sandwiches” exceeding a specified amount. When the owner leased space in the shopping center to Qdoba Mexican Grill, Panera filed suit against the owner, citing the quoted term in the lease agreement. Thus arose the question: What does the lease mean by a “sandwich”? Is a burrito a sandwich? Judge Locke said “no,” citing Webster’s Third New International Dictionary, which defines “sandwich” as “two thin pieces of bread, usually buttered, with a thin layer (as of meat, cheese, or savory mixture) spread between them.” (But what about open-faced “sandwiches”? Sloppy Joes?)

Compare Frigaliment Importing Co. v. B.N.S. Int’l Sales Corp., 190 F. Supp 116 (1960), in which two companies entered into a contract for the sale of “chicken.” Upon receipt of a shipment of what it regarded as stewing chicken or “fowl,” plaintiff sued for breach of contract. Judge Friendly famously wrote: “The issue is, what is a chicken?” Looking to dictionary definitions, trade usage, and other sources, Friendly found that the meaning of “chicken” in the contract was broad enough to include the contents of the disputed shipment.

Is a burrito (a particular kind of thing) an instance of a “sandwich”? Are stewing fowl (a particular kind of thing) an instance of “chicken”? These are examples of textual interpretation issues arising under private instruments (a lease, a contract). But lawyers also routinely construct reasoned arguments around textual interpretations of civic or public instruments—such as statutes, administrative agency regulations, and constitutions (state or federal). We will begin our work in LL&V with arguments built around statutory interpretation.

The federal statute at issue in our first case, Smith v. United States, 508 U.S. 223 (1993), requires an enhanced prison sentence for defendants who “use or carry a firearm during and in relation to a drug trafficking offense.” In Smith, the Supreme Court confronts the question of whether a defendant who trades a gun for drugs “uses” the gun in such a way as to trigger an enhanced sentence under the statute. Notice that the prosecution’s legal reasoning in Smith has just the same form as the reasoning modeled above in the cases involving private

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instruments (the lease and the contract). In the lease case, for example, plaintiff Panera’s argument has the following form. (1) The lease bars the owner from opening the shopping center to another restaurant that sells “sandwiches” (Y); (2) burritos (X) count as sandwiches (Y); (3) therefore the lease bars the owner from opening the shopping center to another restaurant that sells burritos. The prosecutor’s argument in Smith is just the same. (1) The statute requires an enhanced sentence when defendant “uses a firearm” (Y); (2) trading (or offering to trade) a gun for drugs (X) counts as using a firearm (Y); (3) therefore the statute requires an enhanced sentence when defendant trades (or offers to trade) a gun for drugs. The only difference is that the instrument that the prosecutor is interpreting in Smith is a “public” or “civic” text (a statute enacted by Congress and signed into law by the President) rather than a private instrument (such as a lease, contract, or will).

All of us already have a great deal of experience with textual interpretation, and with offering reasons based on how we read a text. In law, we draw upon that experience and hone it—it is not something we make up from scratch. Accordingly, in the first weeks of class, we will develop concepts and techniques that draw upon our facility for communication and linguistic uptake. In particular, we will prepare ourselves to participate in careful argument about textual interpretations advanced as legal reasons. For in the cases we will discuss, the parties do not agree about what the text means. It is not enough to say that the contract covers X because it covers Y and X is an instance of Y. It must be shown why X is an instance of Y.

Here is another example of textual interpretation in a contract suit. In 1952, singer Peggy Lee co-wrote and sang a number of songs for the Disney movie, “Lady and the Tramp,” and provided the voices for four characters. In the contract between Lee and Disney, Lee retained the rights to “transcriptions.” That term was understood in 1952 to mean audio recordings. Years passed, video technology was created, and “Lady and the Tramp” became a top-selling video. Lee sued Disney Co. for the video rights. Does (or did) “transcription” mean only audio recording or does it have a wider meaning—one which embraces other kinds of recordings, including video?

You might approach the question initially by looking up the word “transcription” in a dictionary. Or you might see if you could find out whether the word was commonly used in such contracts at the time, and, if so, what it was commonly thought to cover. But if you take a step back from the question, you’ll notice that the law seems to make a great deal (fortunes, plans, incentives, hopes, disappointments) turn on the meaning of a word. Yet the meaning of a word like “transcription” seems thin in comparison to life’s complexities, brittle in

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comparison to the fluidity of time. Do the word’s general meanings match the particularities of lives and histories? In 1952, video technology was largely unforeseen, perhaps unforeseeable. Four decades later, Peggy Lee sat in the courtroom in a wheelchair, “frail and with failing eyesight,” seeking some fraction of the $90 million that “Lady and the Tramp” had earned in the video market. How does the meaning of a word match up with technological change and the passages of life? Does the word serve as a lens into what is fair, or right, or good, or useful? How can a court decide whether something counts as a “transcription”?

Let’s turn now from private instruments to “public” or “civic” instruments—and in particular, to statutory interpretation. How is a court to decide whether a certain kind of behavior (trading a gun for drugs) counts as “using a firearm” within the meaning of the statute? Should a court make a judgment of social policy (is trading a gun for drugs as dangerous and socially undesirable as brandishing a gun in the course of buying, selling, or transporting drugs)? Or should a court ask what result Congress intended (or would have intended, had the question arisen)? Neither, says Justice Scalia in his dissenting opinion in Smith. Law is written in language; a law means what it says. And, says Justice Scalia, trading a gun for drugs is not “using a gun,” any more than scratching your head with a cane is “using a cane.”

The Smith case raises much the same interpretive problem as Peggy Lee’s contract dispute with the Disney Co. Are arguments about whether Peggy Lee has a contractual right to a share of the video earnings of “Lady and the Tramp” settled by some judgment about what the word “transcription” means (answering a question about language), or instead by some judgment about the best (fairest, most socially productive) distribution of earnings from the factors of production (answering a question about values)? Are arguments about whether Mr. Smith must do thirty additional years of prison time, above and beyond his sentence for his underlying drug offense, settled by some judgment about what the word “use” means (answering a question about language), or instead by some judgment about how bad Smith’s conduct was and how much punishment he deserves (answering a question about values)? Or does interpretation of contractual and statutory language activate and order all of the legally relevant values?

2. Notes and questions on textual interpretation in legal reasoning

1. Does nature supply an answer to Judge Friendly’s question, “What is a chicken?” What we call “chicken” is the domesticated subspecies of red junglefowl, Gallus gallus domesticus. Are the taxonomic, morphological, and genetic characteristics that define Gallus gallus domesticus the very characteristics that qualify something as the “chicken” that is the subject matter of the contract in Frigaliment? Or is the meaning of “chicken” in the contract a
function of social conventions (e.g., trade practices in the poultry industry)? If social conventions govern what counts as a “sandwich” within the meaning of Panera’s lease agreement, so that a court would look to such conventions in order to decide whether restaurants selling hot dogs, hamburgers, or burritos are excluded from the shopping center, could similar social conventions disqualify something as a contractual “chicken,” even if that thing belongs to *Gallus gallus domesticus*?

2. The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Suppose that California by statute prohibits private ownership or possession of bazookas. Defendant, who has been charged with violating this statute, argues that the statute violates the Second Amendment. (Assume for this purpose, as the Supreme Court has recently decided, that the Second Amendment constrains not only the federal government but also the states.) As judge presiding at her trial, you must decide the Second Amendment issue. As you read the language of the Amendment, what word or words in the text are relevant to the legal issue? Compare two ways of looking at this problem. (1) The key word at issue is the word “arms.” The legal issue raised is: What does the Second Amendment mean by an “arms”? Or, is a bazooka (X) an “arm” (Y) within the meaning of the Second Amendment? (2) The key words in the Second Amendment are “keep and bear.” What do these words mean? Suppose Californians may use bazookas legally if the bazookas are kept at state armories and used as part of a regular exercise of the state militia. Does private possession and use of bazookas (X) come within the act-description, “keep and bear arms” (Y)? As you compare these two ways of looking at the problem, ask: are they exhaustive? Or should the constitutional issue raised by defendant also turn on the meaning of the terms “well-regulated,” “necessary,” “security,” or “free state”? Should the outcome of the case pivot on the semantics of “arm,” or on a wider political argument about what constitutes freedom and security (“the security of a free state”)? Or is this a false dichotomy?

3. The Second Amendment begins by stating the purpose that the right to keep and bear arms is meant to serve. While some constitutional and statutory provisions contain such purpose statements, many do not. The federal sentence-enhancement statute applied in *Smith* does not recite its purpose. As you read the opinions in *Smith*, ask: how does the absence of a stated purpose affect the work of interpreting the statute?

4. What is the proper role, if any, for moral reasoning, policy analysis, or political judgment in the judicial interpretation of a textual word such as “arms,” or a textual phrase such as “keep and bear arms” or “uses a firearm”? What is the proper role, if any, for moral reasoning, policy analysis, or political judgment in the judicial interpretation of words or phrases such as “well-regulated militia” or “security of a free state”? Compare the Eighth Amendment, which prohibits
“cruel and unusual punishments.” Is there a legitimate judicial role for some form of moral reasoning, policy analysis, or political judgment in the interpretation of that phrase, and in determining whether some punishment X counts as an instance of “cruel and unusual punishment” (Y)? In what way, if any, does the specific language of the relevant legal text properly shape the statement and analysis of the legal issue? Does the language of the legal text distinguish the kinds of reasoning responsive to the legal issue from the general kinds of reasoning responsive to contested questions of political morality—questions debated in public political argument?

5. Article I § 8 of the Constitution gives Congress power “to raise and support Armies . . . [and] to provide and maintain a Navy.” Does Congress have power to create and support an Air Force? Is it helpful, in stating the legal issue, to ask: “Is an Air Force (X) an Army (Y)?” Less helpful than asking “Is a bazooka an arm?” Why or why not?

B. Linguistic and normative grounds of decision

3. Smith v. United States

508 U.S. 223 (1993)

Justice O’CONNOR delivered the opinion of the Court, in an opinion joined by Justices White, Kennedy, Thomas, Blackmun, and Chief Justice Rehnquist.

We decide today whether the exchange of a gun for narcotics constitutes “use” of a firearm “during and in relation to . . . [a] drug trafficking crime” within the meaning of 18 U.S.C. § 924(c)(1). We hold that it does. [18 United States Code § 924 is a federal statute that provides for sentence enhancements in certain circumstances. The trial court had found Smith guilty of the underlying offense of drug trafficking, and that decision was not before the Supreme Court in this case. The question, instead, was whether conduct such as Smith’s met the statutory requirements for an enhanced sentence. If so, thirty years would be added to Smith’s sentence.]

2 The relevant language of the statute provides:

Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle or short-barreled shotgun to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silence or firearm muffler, to imprisonment for thirty years.
I

Petitioner John Angus Smith and his companion went from Tennessee to Florida to buy cocaine; they hoped to resell it at a profit. While in Florida, they met petitioner’s acquaintance, Deborah Hoag. Hoag agreed to, and in fact did, purchase cocaine for petitioner. She then accompanied petitioner and his friend to her motel room, where they were joined by a drug dealer. While Hoag listened, petitioner and the dealer discussed petitioner’s MAC-10 firearm. The dealer expressed his interest in becoming the owner of a MAC-10.

Unfortunately for petitioner, Hoag had contacts not only with narcotics traffickers but also with law enforcement officials. [S]he informed the Broward County Sheriff’s Office of petitioner’s activities. The Sheriff’s Office responded quickly, sending an undercover officer to Hoag’s motel room. The undercover officer presented himself to petitioner as a pawnshop dealer. Petitioner presented the officer with a proposition: He had an automatic MAC-10 and silencer with which he might be willing to part. Petitioner then pulled the MAC-10 out of a black canvas bag and showed it to the officer. Rather than asking for money, however, petitioner asked for drugs. He was willing to trade his MAC-10, he said, for two ounces of cocaine. The officer told petitioner that he was just a pawnshop dealer and did not distribute narcotics. Nonetheless, he indicated that he wanted the MAC-10 and would try to get the cocaine. The officer then left, promising to return within an hour. Petitioner was not content to wait. The officers who were conducting surveillance saw him leave the motel room carrying a gun bag.

A grand jury returned an indictment charging petitioner with, among other offenses, two drug trafficking crimes. Most important here, the indictment alleged that petitioner knowingly used the MAC-10 and its silencer during and in relation to a drug trafficking crime. The jury convicted petitioner on all counts.

On appeal, petitioner argued that §924(c)(1)’s penalty covers only situations in which the firearm is used as a weapon. According to petitioner, the provision does not extend to defendants who use a firearm solely as a medium of exchange or for barter. The plain language of the statute, the [appellate] court explained, imposes no requirement that the firearm be used as a weapon. Instead, any use of “the weapon to facilitate in any manner the commission of the offense” suffices.

II

Section 924(c)(1) requires the imposition of specified penalties if the defendant, “during and in relation to any crime of violence or drug trafficking crime[,] uses or carries a firearm.” By its terms, the statute requires the
prosecution to make two showings. First, the prosecution must demonstrate that the defendant “use[d] or carrie[d] a firearm.” Second, it must prove that the use or carrying was “during and in relation to” a “crime of violence or drug trafficking crime.”

A

Petitioner argues that exchanging a firearm for drugs does not constitute “use” of the firearm within the meaning of the statute. He points out that nothing in the record indicates that he fired the MAC-10, threatened anyone with it, or employed it for self-protection. In essence, petitioner argues that he cannot be said to have “use[d]” a firearm unless he used it as a weapon, since that is how firearms most often are used. . . . [W]e confine our discussion to what the parties view as the dispositive issue in this case: whether trading a firearm for drugs can constitute “use” of the firearm within the meaning of § 924(c)(1).

When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning. . . . Surely petitioner’s treatment of his MAC-10 can be described as “use” within the every day meaning of that term. Petitioner “used” his MAC-10 in an attempt to obtain drugs by offering to trade it for cocaine. Webster’s defines “to use” as “[t]o convert to one’s service” or “to employ.” . . . Black’s Law Dictionary contains a similar definition: “[t]o make use of; to convert to one’s service; to employ; to avail oneself of; to utilize; to carry out a purpose or action by means of.” . . . Petitioner’s handling of the MAC-10 in this case falls squarely within those definitions. By attempting to trade his MAC-10 for the drugs, he “used” or “employed” it as an item of barter to obtain cocaine; he “derived service” from it because it was going to bring him the very drugs he sought.

In petitioner’s view, § 924(c)(1) should require proof not only that the defendant used the firearm but also that he used it as a weapon. But the words “as a weapon” appear nowhere in the statute. Rather, § 924(c)(1)’s language sweeps broadly, punishing any “us[e]” of a firearm, so long as the use is “during and in relation to” a drug trafficking offense. . . . Had Congress intended the narrow construction petitioner urges, it could have so indicated. . . .

Language, of course, cannot be interpreted apart from context. The meaning of a word that appears ambiguous if viewed in isolation may become clear when the word is analyzed in light of the terms that surround it. Recognizing this, petitioner and the dissent . . . contend that the average person on the street would not think immediately of a guns-for-drugs trade as an example of “us[ing] a firearm.” Rather, that phrase normally evokes an image of the most familiar use to which a firearm is put—use as a weapon. Petitioner and the dissent therefore argue that the statute excludes uses where the weapon is not . . . employed for its destructive capacity. . . . Indeed, relying on that argument—and without citation to authority—the dissent announces its own, restrictive definition
of “use.” “To use an instrumentality,” the dissent argues, “ordinarily means to use it for its intended purpose.”

There is a significant flaw to this argument. It is one thing to say that the ordinary meaning of “uses a firearm” includes using a firearm as a weapon, since that is the intended purpose of a firearm and the example of “use” that most immediately comes to mind. But it is quite another to conclude that, as a result, the phrase also excludes any other use. In any event, the only question in this case is whether the phrase “uses . . . a firearm” in § 924(c)(1) is most reasonably read as excluding the use of a firearm in a gun-for-drugs trade. The fact that the phrase clearly includes using a firearm to shoot someone, as the dissent contends, does not answer it.

We are not persuaded that our construction of the phrase “uses . . . a firearm” will produce anomalous applications. Although scratching one’s head with a gun might constitute “use,” that action cannot support punishment under § 924(c)(1) unless it facilitates or furthers the drug crime.

In any event, the “intended purpose” of a firearm is not that it be used in any offensive manner whatever, but rather that it be used in a particular fashion – by firing it. The defendant’s contention therefore cannot be that the firearm “as a weapon,” but rather that he must fire it or threaten to fire it, “as a gun.” Under the dissent’s approach, then, even the criminal who pistol-whips his victim has not used a firearm within the meaning of § 924(c)(1), for firearms are intended to be fired or brandished, not used as bludgeons.

To the extent there is uncertainty about the scope of the phrase “uses . . . a firearm” in § 924(c)(1), we believe the remainder of § 924 appropriately sets it to rest. Just as a single word cannot be read in isolation, nor can a single provision of a statute. As we have recognized:

Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme. . . . United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.

Here, Congress employed the words “use” and “firearm” together not only in § 924(c)(1), but also in § 924(d)(1), which deals with forfeiture of firearms. Under § 924(d)(1), any “firearm or ammunition intended to be used” in the various offenses listed in § 924(d)(3) is subject to seizure and forfeiture. Consistent with petitioner’s interpretation, § 924(d)(3) lists offenses in which guns might be used as offensive weapons. But it also lists offenses in which the firearm is not used as a weapon but instead as an item of barter or commerce. Unless we are to hold that using a firearm has a different meaning in § 924(c)(1) than it does in § 924(d)—and clearly we should not—we must reject petitioner’s narrow interpretation.
The dissent suggests that our interpretation produces a “strange dichotomy” between “using” a firearm and “carrying” one. . . . We do not see why that is so. Just as a defendant may “use” a firearm within the meaning of § 924(c)(1) by trading it for drugs or using it to shoot someone, so too would a defendant “carry” the firearm by keeping it on his person whether he intends to exchange it for cocaine or fire it in self-defense. The dichotomy arises, if at all, only when one tries to extend the phrase “uses . . . a firearm” to any use “for any purpose whatever.” . . .

Finally, it is argued that § 924(c)(1) originally dealt with use of a firearm during crimes of violence; the provision concerning use of a firearm during and in relation to drug trafficking offenses was added later. . . . From this, the dissent infers that “use” originally was limited to use of a gun “as a weapon.” . . . [But] because the phrase “uses . . . a firearm” is broad enough in ordinary usage to cover use of a firearm as an item of barter or commerce, Congress was free in 1986 so to employ it. . . . Accordingly, we conclude that using a firearm in a gun-for-drugs trade may constitute “usi[ing] a firearm” within the meaning of § 924(c)(1).

B

Petitioner insists that the relationship between the gun and the drug offense in this case is not the type of connection Congress contemplated when it drafted §924(c)(1). With respect to that argument, we agree with the District of Columbia Circuit’s observation:

“It may well be that Congress, when it drafted the language of §924(c), had in mind a more obvious use of guns in connection with a drug crime, but the language [of the statute] is not so limited[;] nor can we imagine any reason why Congress would not have wished its language to cover this situation. Whether guns are used as the medium of exchange for drugs sold illegally or as a means to protect the transaction or dealers, their introduction into the scene of drug transactions dramatically heightens the danger to society.” . . .

C

Finally, the dissent and petitioner invoke the rule of lenity. . . . The mere possibility of articulating a narrower construction, however, does not by itself make the rule of lenity applicable. Instead, that venerable rule is reserved for cases where, “[a]fter ‘seiz[ing] every thing from which aid can be derived,’ “the Court is “left with an ambiguous statute.” United States v. Bass, 404 U.S. 336, 347 (1971) . . . . This is not such a case. Not only does petitioner’s use of his MAC-10 fall squarely within the common usage and dictionary definitions of the terms “uses . . . a firearm,” but Congress affirmatively demonstrated that it meant to include transactions like petitioner’s as “usi[ing] a firearm” by so employing those terms in § 924(d).
Imposing a more restrictive reading of the phrase “uses . . . a firearm” does violence not only to the structure and language of the statute, but to its purpose as well. When Congress enacted the current version of § 924(c)(1), it was no doubt aware that drugs and guns are a dangerous combination. In 1989, 56 percent of all murders in New York City were drug related; during the same period, the figure for the Nation’s Capital was as high as 80 percent. The American Enterprise 100 (Jan.-Feb. 1991). The fact that a gun is treated momentarily as an item of commerce does not render it inert or deprive it of destructive capacity. Rather, as experience demonstrates, it can be converted instantaneously from currency to cannon. We therefore see no reason why Congress would have intended courts and juries applying § 924(c)(1) to draw a fine metaphysical distinction between a gun’s role in a drug offense as a weapon and its role as an item of barter; it creates a grave possibility of violence and death in either capacity.

We have observed that the rule of lenity “cannot dictate an implausible interpretation of a statute, nor one at odds with the generally accepted contemporary meaning of a term.” Taylor v. United States, 495 U.S. 575, 596 (1990). That observation controls this case. Both a firearm’s use as a weapon and its use as an item of barter fall within the plain language of § 924(c)(1), so long as the use occurs during and in relation to a drug trafficking offense; both must constitute “uses” of a firearm for § 924(d)(1) to make any sense at all; and both create the very dangers and risks that Congress meant § 924(c)(1) to address. We therefore hold that a criminal who trades his firearm for drugs “uses” it during and in relation to a drug trafficking offense within the meaning of § 924(c)(1). Because the evidence in this case showed that petitioner “used” his MAC-10 machine gun and silencer in precisely such a manner, proposing to trade them for cocaine, petitioner properly was subjected to § 924(c)(1)’s 30-year mandatory minimum sentence. The judgment of the Court of Appeals, accordingly, is affirmed.

It is so ordered.

[Short concurrence by Justice Blackmun omitted.]

Justice SCALIA (joined by Justices Stevens and Souter), dissenting.

Section 924(c)(1) mandates a sentence enhancement for any defendant who “during and in relation to any crime of violence or drug trafficking crime . . . uses . . . a firearm.” . . . The Court begins its analysis by focusing upon the word “use” in this passage, and explaining that the dictionary definitions of that word are very broad. . . . It is, however, a “fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” Deal v. United States. . . That is particularly true of a word as elastic as
“use,” whose meanings range all the way from “to partake of” (as in “he uses tobacco”) to “to be wont or accustomed” (as in “he used to smoke tobacco”).

In the search for statutory meaning, we give nontechnical words and phrases their ordinary meaning. To use an instrumentality ordinarily means to use it for its intended purpose. When someone asks “Do you use a cane?” he is not inquiring whether you have your grandfather’s silver-handled walking-stick on display in the hall; he wants to know whether you walk with a cane. Similarly, to speak of “using a firearm” is to speak of using it for its distinctive purpose, i.e., as a weapon. To be sure, “one can use a firearm in a number of ways,” including as an article of exchange . . . but that is not the ordinary meaning of “using” the one or the other. The Court does not appear to grasp the distinction between how a word can be used and how it ordinarily is used. It would, indeed, be “both reasonable and normal to say that petitioner ‘used’ his MAC-10 in his drug trafficking offense by trading it for cocaine.” It would also be reasonable and normal to say that he “used” it to scratch his head. When one wishes to describe the action of employing the instrument of a firearm for such unusual purposes, “use” is assuredly a verb one could select. But that says nothing about whether the ordinary meaning of the phrase “uses a firearm” embraces such extraordinary employments. It is unquestionably not reasonable and normal, I think, to say simply “do not use firearms” when one means to prohibit selling or scratching with them.

Given our rule that ordinary meaning governs, and given the ordinary meaning of “uses a firearm,” it seems to me inconsequential that “the words ‘as a weapon’ appear nowhere in the statute,” . . . they are reasonably implicit. Petitioner is not, I think, seeking to introduce an “additional requirement” into the text . . . but is simply construing the text according to its normal import.

The Court seeks to avoid this conclusion by referring to the next subsection of the statute, § 924(d), which does not employ the phrase “uses a firearm,” but provides for the confiscation of firearms that are “used in” referenced offenses which include the crimes of transferring, selling, or transporting firearms in interstate commerce. The Court concludes from this that whenever the term appears in this statute, “use” of a firearm must include nonweapon use. . . . I do not agree. We are dealing here not with a technical word

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The Court asserts that the “significant flaw” in this argument is that “to say that the ordinary meaning of ‘uses a firearm’ includes using a firearm as a weapon” is quite different from saying that the ordinary meaning “also excludes any other use.” The two are indeed different – but it is precisely the latter that I assert to be true: The ordinary meaning of “uses a firearm” does not include using it as an article of commerce. I think it perfectly obvious, for example, that the objective falsity requirement for a perjury conviction would not be satisfied if a witness answered “no” to a prosecutor’s inquiry whether he had ever “used a firearm,” even though he had once sold his grandfather’s Enfield rifle to a collector.
or an “artfully defined” legal term . . . but with common words that are . . . inordinately sensitive to context. Just as adding the direct object “a firearm” to the verb “use” narrows the meaning of that verb (it can no longer mean “partake of”), so also adding the modifier “in the offense of transferring, selling, or transporting firearms” to the phrase “use a firearm” expands the meaning of that phrase (it then includes, as it previously would not, nonweapon use). But neither the narrowing nor the expansion should logically be thought to apply to all appearances of the affected word or phrase. Just as every appearance of the word “use” in the statute need not be given the narrow meaning that word acquires in the phrase “use a firearm,” so also every appearance of the phrase “use a firearm” need not be given the expansive connotation that phrase acquires in the broader context “use a firearm in crimes such as unlawful sale of firearms.” When, for example, the statute provides that its prohibition on certain transactions in firearms “shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes,” 18 U.S.C. §§ 922(a)(5)(B), (b)(3)(B), I have no doubt that the “use” referred to is only use as a sporting weapon, and not the use of pawning the firearm to pay for a ski trip. Likewise when, in § 924(c)(1), the phrase “uses . . . a firearm” is not employed in a context that necessarily envisions the unusual “use” of a firearm as a commodity, the normally understood meaning of the phrase should prevail.

Another consideration leads to the same conclusion: § 924(c)(1) provides increased penalties not only for one who “uses” a firearm during and in relation to any crime of violence or drug trafficking crime, but also for one who “carries” a firearm in those circumstances. The interpretation I would give the language produces an eminently reasonable dichotomy between “using a firearm” (as a weapon) and “carrying a firearm” (which in the context “uses or carries a firearm” means carrying it in such manner as to be ready for use as a weapon). The Court’s interpretation, by contrast, produces a strange dichotomy between “using a firearm for any purpose whatever, including barter,” and “carrying a firearm.” . . .

Finally, although the present prosecution was brought under the portion of § 924(c)(1) pertaining to use of a firearm “during and in relation to any . . . drug trafficking crime,” I think it significant that that portion is affiliated with the pre-existing provision pertaining to use of a firearm “during and in relation to any crime of violence,” rather than with the firearm-trafficking offenses defined in § 922 and referenced in § 924(d). The word “use” in the “crime of violence” context has the unmistakable import of use as a weapon, and that import carries over, in my view, to the subsequently added phrase “or drug trafficking crime.” Surely the word “use” means the same thing as to both, and surely the 1986 addition of “drug trafficking crime” would have been a peculiar way to expand its meaning (beyond “use as a weapon”) for crimes of violence.
Even if the reader does not consider the issue to be as clear as I do, he must at least acknowledge, I think, that it is eminently debatable – and that is enough, under the rule of lenity, to require finding for the petitioner here. “At the very least, it may be said that the issue is subject to some doubt. Under these circumstances, we adhere to the familiar rule that, ‘where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.’” *Adamo Wrecking Co. v. United States*, 434 U.S. 275, 284-85 (1978). . . .

For the foregoing reasons, I respectfully dissent.

4. Notes and questions on *Smith v. United States*

1. Compare two ways of stating the issue to be decided in *Smith*.
   a. **Formal issue statement:** Is a defendant who trades a firearm for drugs (X) “using a firearm during and in relation to a drug trafficking offense” (Y) within the meaning of 18 U.S.C. § 924(c)(1)?
   b. **Normative issue statement:** Should a defendant who trades a firearm for drugs receive a 30 year sentence enhancement?

Which is the better issue statement: the formalized issue statement, or the more explicitly normative issue statement? Why?

2. Justice O’Connor, writing for the majority, begins her opinion by stating the issue to be decided. This issue states a question of law because the answer to the question will state a general rule applicable to cases that are relevantly similar in their facts. (By contrast, the jury that convicted Smith decided questions of fact, such as: did Smith offer to sell his MAC-10 for drugs?) Notice that Justice O’Connor, for the Court, states the question of law in the formal way (adopting the formal, not the normative, issue statement). “We decide today whether the exchange of a gun for narcotics constitutes ‘use’ of a firearm ‘during and in relation to . . . [a] drug trafficking crime’ within the meaning of 18 U.S.C. §924(c)(1). We hold that it does.” Notice that the two units, labeled X and Y in note one above, that O’Connor builds into her issue statement, are also the units in which she states the rule that the case announces. “We hold that it does” means that the Court holds that X (exchanging a gun for narcotics) counts as Y (“‘use’ of a firearm ‘during and in relation to… [a] drug trafficking crime’ within the meaning of 18 U.S.C. §924(c)(1).”) The Court spells this out in the last paragraph of its opinion: “We therefore hold that a criminal who trades his firearm for drugs “uses” it during and in relation to a drug trafficking offense within the meaning of §924(c)(1).”

3. Should all activities that match dictionary definitions of “use” [a firearm] satisfy the “use” element of the sentence-enhancement statute? Are you persuaded by Justice Scalia’s reasons for giving the phrase “use a firearm” its “ordinary meaning” in “context,” rather than applying the dictionary’s definitions of “use”? (Is Justice O’Connor, for the majority, committed to the position that
all activities that fit the dictionary’s definition of “use” satisfy this element of the sentence-enhancement statute?) Consider the following fact-patterns.

(a) Defendant Don arranges to meet Buyer in the woods, to sell marijuana to Buyer. But police intercede before the exchange, causing Don to flee with his baggie filled with marijuana. Don sprints by the shore of a lake. He can toss the marijuana into the lake—but it will float! Don looks around for something he can use as a sinker, but there is no time to stop. Then he remembers the MAC-10 in his pocket! Don quickly places the gun in the baggie and tosses the whole thing into the lake. Under the statute and Smith, has Don “used a firearm” during and in relation to a drug-trafficking offense?

(b) Suppose that police officer Jones brandishes his service revolver while arresting Mr. Smith. Prosecutors seek a five-year sentence enhancement for Officer Jones, who literally “used a firearm during and in relation to a drug-trafficking offense.” Is there anything in the language of § 924(c)(1) that makes it clear that this provision does not apply to Officer Jones’ use of his firearm? Or would a court need to go outside the language of the statute, to common sense or to an interpretation of the statute’s purpose, in order to hold for Officer Jones?

4. Does Justice O’Connor base her decision on the ordinary language meaning of the word “use”? Or on Congress’s intent in enacting the statute? Or on the social policy claim that trading a gun for drugs brings about an increase in dangerousness comparable to that caused when guns are used as weapons during drug deals? Of these possible grounds of decision, which are strongest? (Do all three of these grounds of decision point in the same direction? If not, how are the conflicting indications to be resolved?)

5. Justice Scalia is usually considered a conservative justice, and conservatives usually favor more severe criminal punishment. What does Justice Scalia’s opinion in this case suggest about the relationship between legal decisionmaking and judge’s political view or policy preferences?

6. Justice Scalia’s views of statutory interpretation have been called a kind of “textualism.” Scalia’s textualism can be seen as a judicial intervention, meant to reform the law-making process so that legislators are held politically accountable for the bills they visibly enact into law (that is, the visible language of the statutes), thus making the legislative process more democratically responsive. See the discussion of textualism and other theories of statutory interpretation in Garrett, reading #7 infra.

7. In part II.B. of her opinion for the Court, in a passage omitted from your excerpt, Justice O’Connor sides with the dissent rather than with the majority in the Ninth Circuit case, United States v. Phelps, 895 F.2d 1281 (1990). The facts of Phelps were similar to those of Smith, in that defendant traded a MAC 10 gun for drugs. While the Phelps majority held that trading a gun for drugs is not “using” a gun within the meaning of the federal sentence-enhancement statute,
Judge Kozinski, dissenting, argued that such transactions clearly satisfied the federal statutory requirements for an enhanced sentence. As it happens, Judge Kozinski, who shares many of Justice Scalia’s beliefs on matters of law and legal policy, also shares his “textualist” commitment. Kozinski and Scalia agree that judges ought to apply statutes in light of their ordinary meaning in context, rather than look to arguments of social policy, legislative history, or dictionary definitions. What reasoning might Judge Kozinski advance, within the limits of textualist methodology, for his Phelps dissent? What explains how two leading judges, both “conservative,” both “textualist,” reach opposite conclusions?

8. Justice Scalia accuses the majority of taking the meaning of the word “use” (or of the phrase “use a firearm”) out of context. Is Justice O’Connor guilty or innocent of the charge? Might Justice O’Connor turn Scalia’s critique against him? (Look closely at Scalia’s “thought experiments” that test our linguistic intuitions about the phrase “uses a firearm.”)

9. Justice O’Connor points to §924(d)(1), which provides the firearms “intended to be used” in the commission of various crimes, including illegal selling or trading of firearms, are forfeited to the federal government. She says that because the word “use” encompasses trade or barter in §924(d)(1), it should also be read to include trade or barter in §924(c)(1). Here the majority opinion clearly offers a reason that supports its conclusion that trading a firearm for drugs counts as “using a firearm” within the meaning of §924(c)(1). How weighty is that reason? On the one hand, giving words or phrases consistent meaning across parallel statutory provisions would seem to be fair and principled. On the other hand, consider the different consequences that attach to §924(d)(1) (forfeiture of the firearm) and §924(c)(1) (up to thirty additional years of prison time). Might “use” include barter when the consequence of use is forfeiture, but not include barter when the consequence of use is a very long prison term? Recall that not only Scalia dissenting, but also O’Connor for the majority, affirm that words and phrases are sensitive to their context. Might the word “use” have a somewhat wider meaning in the context of forfeiture than in the context of sentence enhancement? (Suppose that at T1, a state court has held that a skateboard is not a “vehicle” subject to a statutory tax on “vehicles.” At T2, the court is considering whether a statute prohibiting “vehicles” in the public parks applies to skateboards. Does the purpose of the park regulation differ enough from the purpose of a tax to defeat the argument that consistency requires the word “vehicle” to have the same meaning in both statutes?) As we read our next main case, and as we consider other cases and hypotheticals in the weeks ahead, attend closely to the context-sensitivity of statutory words and phrases.

10. Compare three questions:
   (a) Is stewing fowl “chicken” within the meaning of the contract?
   (b) Are burritos “sandwiches” within the meaning of the lease agreement?
(c) Is trading a gun for drugs “using a firearm” within the meaning of the sentence enhancement statute?

Are the three questions basically similar to one another, in that the answer in each case is supplied by some account of the relevant social conventions? (Which social conventions are relevant in each case?) Or is the first question different from the others because nature, not merely social conventions, individuates (separates out) chickens? Or is the third question different from the others because answering it requires making a policy judgment about dangerousness and a normative judgment about deserved punishment?

11. What is the purpose of 18 U.S.C. § 924(c)(1)? Which interpretation of that provision is most in accord with its purpose? Does either the majority or dissenting opinion refer to the statute's purpose?

12. Suppose you are on the Smith court. Council for Mr. Smith offers uncontested evidence that mandatory sentence enhancement statutes contribute to prison overcrowding, which in turn causes early release of prisoners (especially during economic downturns). Thus, the more broadly that courts construe the phrase “uses a firearm,” the more prisoners will be released early. Do you regard this social consequence as a reason that is relevant to the legal issue in Smith? Why/not?

13. For a brief period after the French Revolution, French judges were forbidden to “interpret” statutes. If doubt about the meaning of a statute arose during a case, judges were supposed to petition the legislature to interpret the statute and then apply the legislature’s interpretation to the case. The procedure was known as référe législatif. Do you think that’s a good procedure? Should we adopt it in the United States? Can you guess why it was abandoned in France?

14. At the end of his opinion, Justice Scalia refers to the rule of lenity, which requires ambiguous statutes to be interpreted in favor of criminal defendants. The rule of lenity is one of a large number of “canons of construction” which courts sometimes use in interpreting statutes. In this context, “canon” means rule. Here are some other examples of canons of construction.

- Interpret statutes so that they are constitutional and to avoid difficult constitutional questions
- Interpret federal statutes so that they do not preempt (conflict with) state laws
- Interpret statutory provisions with reference to the whole statute
- Avoid interpreting a statutory provision in a way that would render other statutory provisions superfluous, redundant, or unnecessary.
- Statutes in derogation of the common law should be interpreted narrowly.

Canons of construction are usually used when the statute itself is ambiguous. Most, like methods of interpretation more generally, were created by judges in the process of interpreting statutes. While the canons are sometime helpful, they often
complicate statutory interpretation. For example, the last two canons seem to contradict each other, as most remedial statutes (and in fact nearly all statutes) change the common law, and therefore can be seen as “in derogation of the common law.”

C. The level of generality (choice of description) problem

5. Note on levels of generality

1. Stating legislative intent at different levels of generality

Most things, persons, mental states, and other items of interest in the law, can be described truthfully or accurately in many different ways. The thing you’re sitting on is “a chair,” “a chair with four legs,” “a brown plastic chair with four legs,” “a brown plastic chair with four legs, in room 101 of the law school.” Note that all of these descriptions can be equally true of the thing being described. The descriptions differ, though, in their level of generality. “Chair” is a description at a much higher level of generality than “a brown plastic chair with four legs, in room 101 of the law school.”

In most contexts in everyday life, we have no great difficulty choosing an appropriate level of generality at which to describe an object of interest. If there aren’t enough chairs in room 103, and class isn’t meeting in room 101, I might ask you whether you would “bring in a chair from room 101.” We would understand one another perfectly, and get the job done. It would not matter, for this purpose, whether the chair had four legs, or was brown or made of plastic. But now imagine that a sign is posted in room 101: “Do not remove the chairs.” You notice a few 3-legged stools, and bring them in to room 103. Have you violated the sign’s prohibition?

One way to address that question is in terms of “legislative intent.” Did the administration of the law school intend the stools to come within the prohibition against removing chairs? Notice that the objects of intentions, just like objects on which you sit, can be described at various levels of generality. The law school administration could be described as intending to prohibit the removal of “things that students sit on in classrooms” (very high level of generality—does this also include desks?). Or the law school administration could be described as intending to prohibit the removal of four-legged sitting devices that have backrests—the kinds of objects that standardly come to mind when one thinks of “chair.” (This is similar to “using a gun as a weapon,” which according to Scalia is what standardly comes to mind when one thinks of “using a gun.”) This description is at a much lower level of generality. Depending on one’s choice of description of the object of the law school administration’s