THE ETYMOLOGICAL CANON

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I. INTRODUCTION

Legal disputes frequently turn on the meaning of a single word.[1] Courts have traditionally looked to several sources to interpret legal terms: the word's ordinary meaning,[2] dictionary definitions,[3] contemporaneous records,[4] and, more controversially, corpus linguistics.[5] But courts and scholars have largely forgotten one of the oldest tools of legal interpretation: etymology.

"Etymology" refers to the historical evidence of a word's origin and development.[6] This may include its roots and morphemes, patterns of semantic change, and

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1. Perhaps the most famous example is Judge Friendly's opinion in *Frigaliment Importing Co. v. B.N.S. International Sales Corp.*, 190 F. Supp. 116, 117 (S.D.N.Y. 1960), which begins "[W]hat is chicken?" *Id.*

2. *See, e.g.*, Food Mktg. Inst. v. Argus Leader Media, 588 U.S. 427, 436 (2019).

3. *See, e.g.*, Intel Corp. Inv. Pol'y Comm. v. Sulyma, 589 U.S. 178, 184–85 (2020).

4. *See, e.g.*, Dist. of Columbia v. Heller, 554 U.S. 570, 584 (2008) (reviewing "founding-era sources").

5. *See, e.g.*, Facebook, Inc. v. Duguid, 592 U.S. 395, 412 (2021) (Alito, J., concurring) (discussing potential of corpus linguistics); N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 109 (2022) (Breyer, J., dissenting) (citing brief by corpus linguistics professors and experts). *See generally* Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 YALE L.J. 788 (2018) (advocating use of corpus linguistics in legal interpretation).

6. *See generally* YAKOV MALKIEL, ETYMOLOGY (1993) (providing history of etymology within linguistics).

cognates across languages. Etymology does not displace ordinary meaning, settled terms of art, or controlling context. It is admittedly a secondary tool that can illuminate the path once primary methods have been exhausted. But used with discipline, it can confirm a reading already supported by conventional tools, clarify a genuinely ambiguous term by identifying a prior or root sense, and explain the mapping between cognate legal concepts across languages or legal systems.

This Article proposes to formalize this limited role in a modest canon of construction. Under the etymological canon, when a legal term remains uncertain after ordinary-meaning analysis, courts may consult the term's etymology as non-dispositive evidence, provided the etymology is proximate, well-sourced, and not otherwise inconsistent with technical usage or controlling context.

The case for this canon is both historical and functional. As a descriptive matter, etymology has long been a part of legal reasoning, from Roman law through Coke to modern Supreme Court cases. Yet despite renewed focus on grammar and other philological tools in legal analysis, scholars have inexplicably omitted the oldest linguistic resource known to law. As a functional matter, etymology can help explain an ambiguous term's meaning, identify possible referents, and supply missing context, all through information encoded in the text of the word itself. Recognizing this canon would promote transparency, by acknowledging what courts already do, and discipline its practice through reliability and non-displacement constraints.

This Article proceeds in three steps. Part II traces the history of etymology in law. Part III develops a four-model framework and demonstrates its application to recurrent interpretive problems. Part IV discusses the proposed canon, elaborates its limits, and addresses methodological and jurisprudential objections. Ultimately, the goal is to recover the forgotten etymological tradition in law and provide an additional

philological tool to aid judges and lawyers like when trying to ascertain the meaning of a word.

II. HISTORY

This Part surveys historical examples of philosophers, jurists, and courts using etymologies to understand the meaning of words from (A) Ancient Greece, (B) Classical Rome, (C) Medieval Europe, (D) Northern Europe, (E) the Nineteenth Century, (F) the Twentieth Century, and (G) the Modern Era.

A. Ancient Greece

Etymology extends at least as far back as the Greeks. Early examples can be found in poetry and history. Hesiod tried to explain the name of the goddess Aphrodite (Ἀφροδίτη) by the myth that she was born of seafoam (ἀφρογενέα).[7] Herodotus employed etymology to explain the names of peoples,[8] professions,[9] and places.[10] Most commonly, geographers such as Pausanias and Strabo provided etymological explanation for mountains, streams, and cities.[11] This genre can often be referred to as etiology: the explanation of where things come from.

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7. HESIOD, *Theogony, in* THEOGONY, WORKS AND DAYS, TESTIMONIA ll. 187–98 (Glenn W. Most ed. & trans.); *cf.* 5 STRABO, GEOGRAPHY 11.2.10 (Horace Leonard Jones trans.) (epithet of Aphrodite); 6 STRABO, GEOGRAPHY 13.1.48 (Horace Leonard Jones trans.) (epithet of Apollo).

8. *See, e.g.*, 2 HERODOTUS, THE PERSIAN WARS 4.110 (A.D. Godley trans.) (explaining the name of the Oiorpata people).

9. *See, e.g.*, 1 HERODOTUS, THE PERSIAN WARS 2.164 (A.D. Godley trans.) (explaining that Egyptian classes were named after their respective professions).

10. *See, e.g.*, *id.* at 2.98 (speculating on origin of city name).

11. 3 PAUSANIAS, DESCRIPTION OF GREECE 8.10.1–2 (W.H.S. Jones trans.) (Mount Alesium), 3.25.1 (river Scyras); 5 STRABO, *supra* note 7, at 10.3.1 (Curetes); 7 STRABO, GEOGRAPHY 16.4.27 (Horace Leonard Jones trans.) (Erembians); 2 STRABO, GEOGRAPHY 5.4.10 (Horace Leonard Jones trans.) (town of Capua); *see also* 3 MACROBIUS, SATURNALIA 5.19.17–18 (Robert A. Kaster ed. & trans.) (Symaethus river).

According to Dionysius of Halicarnassus, Plato was "the first writer to introduce the subject of etymology."[12] Most famously, the *Cratylus* featured a debate over whether words are given by convention or whether they reflect an intrinsic property.[13] Cratylus argued that "everything has a right name of its own, which comes by nature, and that a name is not whatever people call a thing by agreement . . . but that there is a kind of inherent correctness in names, which is the same for all men, both Greeks and barbarians."[14] Hermogenes argued that there is no "correctness of names other than convention and agreement."[15] Socrates assumed the intermediate position that acknowledged the "knowledge of names is no small matter"[16] and that etymology can be used as a tool of dialectical investigation.[17]

In evaluating this claim, the discussants proposed etymologies of many words.[18] One important digression concerned the law. Socrates conjectured that "righteousness" (δικαιοσύνη) is derived from "the understanding" (σύνεσις) of the "just" (τοῦ δικαίου).[19] He also reported that many believe "justice" (δίκαιον) is derived from the belief that a very rapid and subtle element "passes through" all nature (διαϊόν).[20] This prompted Socrates to ask, "What then, . . . if this is true, is justice?"[21] When he received ridiculous answers, he concluded in aporia: "Then, my friend, I am far more

12. DIONYSIUS OF HALICARNASSUS, *On Literary Composition*, *in* 2 CRITICAL ESSAYS 114–15 (Stephen Usher trans., Harvard University Press 1985).

13. PLATO, *Cratylus*, in CRATYLUS, PARMENIDES, GREATER HIPPIAS, LESSER HIPPIAS 433A–E (Harold North Fowler trans.).

14. *Id.* at 383A–B. This led to the famous line: "he who knows the names knows also the things named." *Id.* at 435D.

15. *Id.* at 384D.

16. *Id.* at 384B.

17. *See, e.g.*, *id.* at 410B ("So we must not propose forced explanations of these words, though something might be said about them").

18. *See, e.g.*, *id.* at 399C (deriving ἄνθρωπος from ἀναθρεῖ and ὄπωπε).

19. *Id.* at 412C–D.

20. *Id.* at 412D–E.

21. *Id.* at 413A.

perplexed than before I undertook to learn about the nature of justice."[22] This is his signature coda.

Aristotle was a conventionalist. He held that language is by convention, since words do not arise by nature.[23] Words were "symbols" (σύμβολα) or "signs of affections or impressions of the soul."[24] But they were only "sound having meaning established by convention alone."[25] Nevertheless, one could use etymology to trace the formation of words. Thus, in his *Nicomachean Ethics*, he explained the concept "soundness of mind" (σωφροσύνη) by tracing its derivation from "to save" (σώζειν) and "purpose" (φρόνησις).[26]

But the stoics were foremost in promoting etymology.[27] To quote one commentator, they were "much addicted to etymology and great word-worshippers."[28] Chrysippus, for example, defined dialectic to be the study of "signs and things signified" (περὶ σημαίνοντα καὶ σημαινόμενα).[29] This in turn led to a distinction between what was "sayable" (λεκτόν) and "unsayable" (ἄλεκτον).[30] According to Cicero, the stoics

> gave approval to derivation of words, that is, the statement of the reason why each class of things bears the name that it does—the subject termed by them etymology and then they used derivations as

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22. *Id.* at 413D.

23. ARISTOTLE, *On Interpretation*, *in* THE CATEGORIES, ON INTERPRETATION, PRIOR ANALYTICS 16a2 (Harold P. Cooke trans.).

24. *Id.* at 16a1.

25. *Id.* at 16a2.

26. ARISTOTLE, NICOMACHEAN ETHICS 6.5.5–6. Other examples include ARISTOTLE, *The Situations and Names of Winds*, *in* MINOR WORKS 973b (W.S. Hett trans.) (name of wind Zephyrus); ARISTOTLE, *On the Soul*, *in* ON THE SOUL, PARVA NATURALIA, ON BREATH 405b27–31 (W.S. Hett trans.) (comparing ζῆν "to live" and ζεῖν "to boil").

27. *See, e.g.*, CICERO, DE OFFICIIS 1.23 (Walter Miller trans.) (describing Stoics as those "who diligently investigate the etymology of words").

28. Wolseley Emerton, *Stoic Terminology in Roman Law*, 3 L.Q. REV. 64, 64 (1887).

29. DIOGENES LAERTIUS, *Zeno*, *in* LIVES OF EMINENT PHILOSOPHERS 7.1.62 (R.D. Hicks trans.).

30. *E.g.*, MICHAEL FREDE, *The Stoic Notion of a Lekton*, *in* LANGUAGE: COMPANIONS TO ANCIENT THOUGHT 109, 109–10 (Stephen Everson ed., 1994); *see id.* at 7.1.63–64.

> "tokens" or so to say marks of things, as guides for arriving at proofs or conclusions as to anything of which they desi[r]ed an explanation; and under this head was imparted their whole doctrine of Dialectic, that is, speech cast in the form of logical argument.[31]

To this they added as a counterpart "[r]hetoric, which sets out a continuous speech adapted to the purpose of persuasion."[32] Etymology was thus the organizing feature for dialectic argumentation.

In the Hellenistic period, the library of Alexandria developed into the premier center of scholarship. Although the library burned down, we can read in Byzantine scholia that "many took an interest in Homeric etymology," including Zenodotus and Philitas.[33] To take an example from this genre, one scholion interpreting the first line of Homer's *Iliad* explains that the name Achilles (Ἀχιλεύς) derives from the fact that he imposed "pain on the people of Ilion," i.e., the Trojans (ἄχος τοῖς Ἰλεῦσιν).[34] We are fortunate to have extant over a hundred etymologies from Aristarchus of Samothrace.[35] But these largely focused on identifying the meaning, prosody, or spelling of Homeric poetry, often when words were poorly attested.[36] His pupil Apollodorus of Athens appears to have been the first critic to write a work dedicated exclusively to etymology.[37]

Perhaps the most influential work from this school was the *Art of Grammar* by Dionysios Thrax, which survived to become a standard manual for 1,500 years.[38]

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31. CICERO, *Academica*, *in* ON THE NATURE OF THE GODS, ACADEMICS 1.32 (H. Rackham trans.).

32. *Id.*

33. SCHOLIAST FROM TZETZES, EXEGESIS ON HOMER'S ILIAD, at 126.9 (Hermann ed., 1812).

34. CALLIMACHUS, FRAGMENTS OF UNCERTAIN LOCATION 196 (quoting Schol. et paraphf. Ad Hom. Il. 1.1, at 4.403.29 (Cramer ed.)).

35. Rene Nunlist, *Aristarchus and Etymology*, 95 GLOTTA 201, 202 (2019) (counting 160).

36. *Id.* at 224.

37. *See* RUDOLF PFEIFFER, HISTORY OF CLASSICAL SCHOLARSHIP FROM THE BEGINNING TO THE END OF THE HELLENISTIC AGE 260–61 (1968).

38. DIONYSIOS THRAX, THE GRAMMAR OF DIONYSIOS THRAX.

This work divided grammar into six parts, one of which was titled the "discovery of etymology" (ἐτυμολογίας εὕρεσις).[39] This included instructions on how to distinguish between primitive words (e.g. γῆ or "earth") and derivatives, which derive their origin from another word (e.g. γαιήιος or "earthborn").[40]

B. Classical Rome

As with the Greeks, Roman poets and historians used etymology to explain the world around them. Livy famously provided many etiologies to explain the names of institutions,[41] towns,[42] and geographic features.[43] Tacitus handed down that the emperor Caligula's name derived from his little boots.[44] In this tradition, the

39. *Id.* at 3.

40. *Id.* at 8. It is worth noting that one of the most important Alexandrian scholars was the Jewish philosopher Philo, who employed etymology to interpret the Old Testament. PHILO, *Concerning Noah's Work as a Planter*, *in* 3 ON THE UNCHANGEABLENESS OF GOD, ON HUSBANDRY, CONCERNING NOAH'S WORK AS A PLANTER, ON DRUNKENNESS, ON SOBRIETY 40.165–66 (F.H. Colson & G.H. Whitaker trans.) (analyzing etymology of "drunkenness").

41. *See, e.g.*, LIVY, *Ab Urbe Condita*, *in* HISTORY OF ROME 1.13 (B.O. Foster trans.) (Quirites, Ramnes, Titienses, Luceres).

42. LIVY, PERIOCHAE 61.1 (Aquae Sextiae); LIVY, *supra* note 41, at 1.1 (Lavinium), 4.37 (Capua); *see also* TACITUS, ANNALS 4.65 (John Jackson trans.) (Caelian hill). A scholion by Servius on Aeneid I.366 records that Livy derived Carthage from "New town" in the Carthaginian language. LIVY, *Fragments*, *in* 14 HISTORY OF ROME, SUMMARIES, FRAGMENTS, JULIUS OBSEQUENS, GENERAL INDEX 176–77 (Alfred Cary Schlesinger trans. 1959) ("Carthago est lingua Poenorum nova civitas, ut docet Livius").

43. *See, e.g.*, LIVY, *supra* note 41, at 1.3 (Aventine Hill).

44. TACITUS, *Annals*, *in* HISTORIES, ANNALS 1.41 (Clifford H. Moore trans.) (from *caliga*). His father Germanicus was a general, and the troops gave Caligula the nickname. Perhaps the most famous etymology in classical literature is his description of the Christians, who derive their name from Christ. TACITUS, *supra* note 42, at 15.44 ("Therefore, to scotch the rumour, Nero substituted as culprits, and punished with the utmost refinements of cruelty, a class of men, loathed for their vices, whom the crowd styled Christians. Christus, the founder of the name, had undergone the death penalty in the reign of Tiberius, by sentence of the procurator Pontius Pilatus."). It is significant as a rare attestation of Christ by a pagan author. Edward Gibbon, for one, authenticated the passage in part based on the etymology. 2 EDWARD GIBBON, THE DECLINE AND FALL OF THE ROMAN EMPIRE 500 (1776) ("Moreover the name of Christians had long been given in Rome to the disciples of Jesus; and Tacitus

Romans would develop an even more robust use of etymology in rhetoric and law.

Cicero himself endorsed etymology in legal argumentation. In his *Topica*, he explained that "etymology may be employed, when some argument is derived from the force or meaning of a word."[45]

> Many arguments are derived from *notatio* (etymology). This is what is used when an argument is developed out of the meaning of a word. The Greeks call this ἐτυμολογία (etymologia), and this translated word for word would be in Latin *veriloquium* (veriloquence). But to avoid using a new word that is not very suitable, we call this kind *notatio*, because words are tokens (*notae*) of things. So Aristotle uses σύμβολον (symbolon) for the idea represented by the Latin *nota*. But when the meaning is clear, we need not be so particular about the word which expresses it. In debate, as I have said, many arguments are developed from a word by etymology.[46]

In the same work, he provided several illustrations: *aqua pluvia*,[47] *assiduus*,[48] and *postliminium*[49]—in addition to the etymology of *etymology* itself.[50]

His contemporary Varro was an ardent advocate for the use of etymology. In his *De Lingua Latina*, he observed that "[m]any words indicate one thing now, but formerly meant something else."[51] Thus, the word *hostis* originally meant simply "foreigner" but in Varro's time

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affirms too positively, refers too distinctly to its etymology, to allow us to suspect any mistake on his part.").

45. CICERO, TOPICA 1.10 (H.M. Hubbell trans.) ("tum notatio, cum ex verbi vi argumentum aliquod elicitur hoc modo").

46. *Id.* at 8.35–36.

47. *Id.* at 9.39.

48. *Id.* at 1.9–10; *cf.* QUINTILIAN, ORATOR'S EDUCATION 5.10.55 (describing etymology).

49. CICERO, *supra* note 45, at 8.36–37.

50. *Id.* at 8.36.

51. 1 VARRO, DE LINGUA LATINA 5.3 (Roland G. Kent trans.). Unfortunately, this work is not extant in its entirety. Fragments of his other works also show his interest in etymologies. *See, e.g.*, CATO & VARRO, ON AGRICULTURE 1.48.1–2 (W.D. Hooper & H.B. Ash trans.) (deriving *gluma* from *glubendo*).

meant "enemy."[52] It was therefore difficult for a speaker to keep track of "every manner of variation in popular usage."[53] By comparison, "the examination of the origin of the words" was "an easier task," since words changed according to fixed, identifiable rules.[54] Thus, it was much easier to ascertain the meaning of a word through the principles of etymology, than track every variation in popular speech. Taken to its logical extension, one could argue that a scholar trained in etymology might be better positioned to make sense of words than another employing strictly empirical methods.

Quintilian took a balanced approach. He acknowledged that, in rhetoric, etymology "is sometimes necessary, when the subject in question needs interpretation."[55] For example, Marcus Caelius argued that he was a honest man (*homo frugi*) on the grounds that he was useful and therefore "fruitful" (etymologically related to *frugi*), since he could not plausibly say that he was abstemious (the literal meaning of *frugi*).[56] Quintilian therefore endorsed the use of etymological arguments, which he categorized under arguments by "definition."[57]

But for Quintilian, etymology was not foolproof. He endorsed several etymologies, such as "consul" (*consul*) from "to consult" (*consulere*), "senate" (*senatus*) from "old man" (*senex*), and "king" (*rex*) from "ruler" (*rector*).[58] But he was exasperated with others who claimed fanciful derivations, such as "star" (*stella*) from "drop" (*stilla*):

> And so we come to the minor points on which students of etymology spend so much energy, restoring words which have become slightly altered to their true form by many varied devices—

52. VARRO, *supra* note 51, at 5.3.

53. *Id.* at 5.6.

54. *Id.*

55. 1 QUINTILIAN, INSTITUTIO ORATORIA 1.6.28 (Donald A. Russell trans.).

56. *Id.*

57. *Id.*; *see also id.* at 7.3.25 ("The most useful resource for establishing and refuting a Definition is to be found in Properties and Differentiae, sometimes also in Etymology").

58. *Id.* at 1.6.32–34.

> shortening, lengthening, adding, taking away, or interchanging letters or syllables. Their perverse ingenuity causes them to fall into hideous absurdities.[59]

Thus, elsewhere in the work, he suggested that etymology might only be useful in doubtful cases.[60]

The Pyrrhonist philosopher Sextus Empiricus also addressed etymology at length. A Roman citizen writing in Greek, he criticized grammarians who judged the purity of prose based solely on whether the words were all etymologically Greek.[61] His argument was clever. He explained that there were two possibilities. Either you could try to establish the Hellenism of a word by tracing its roots, and then the roots of the roots, in which case "there is a regress ad infinitum, the etymology will be without a beginning, and we will not know whether the ultimate word is good Greek, seeing that we do not know the nature of the word from which it is first derived."[62] Alternatively, you could trace the etymology of the word back to roots that are known to be Greek words in common use.[63] But under this approach, you could simply define the original word to be a Greek word on the basis that it is commonly used.[64] This contradicts the original assumption that words are to be judged Greek based on their etymology. This is proof by contradiction.

In this context, Sextus Empiricus also made a subtle observation that has relevance to our inquiry. He explained that: "[E]tymology either agrees or disagrees with common usage; and if it agrees it is superfluous, while if it disagrees one should not make use of it."[65] Although this statement addresses principles of diction, it has implications for the law. Let us transpose this argument into the domain of law as follows. Any legal

59. *Id.* at 1.6.32, 1.6.35.
60. *Id.* at 1.6.38.
61. SEXTUS EMPIRICUS, AGAINST THE PROFESSORS 1.11 (R.G. Bury trans.).
62. *Id.* at 1.11.242–43.
63. *Id.* at 1.11.243–47.
64. *Id.*
65. *Id.* at 1.11.241.

case interpreting the meaning of a word by reference to its etymology must fall into one of two categories: Either the etymology is (1) consistent with the ordinary meaning, in which case it is superfluous, or (2) it is inconsistent with the ordinary meaning, in which case the court should reject it.[66] Indeed, one can only evaluate whether the etymology is consistent with the ordinary meaning by reference to something other than the word's etymology. Ergo, etymology can have no use in legal interpretation. This may be the strongest argument against the use of etymology in legal interpretation.

Yet etymology played a central role in Roman law.[67] Perhaps the most prolific coiner of legal etymologies was Antistius Labeo. Aulus Gellius described him as having "become versed in the origin and formation of Latin words, and applied that knowledge in particular to solving many knotty points of law."[68] By comparison, Gellius accused Varro of hypocrisy for criticizing others' etymologies and simultaneously producing his own false examples.[69]

The most accessible source on Roman law is Gaius's *Institutes*. This handbook used etymology to explain terms such as *adrogatio*[70] and *prescriptio*.[71] Notoriously, Gaius derived the term *mutuum* from the phrase "from mine to yours" (*meo tuum*).[72] But this is now "universally

66. For simplicity, I assume the relevant inquiry is the ordinary meaning of an ambiguous term. There are circumstances under which the relevant question will be the technical meaning of a term of art, but a similar logic applies.

67. *Cf.* James Williams, *Legal Etymology*, 28 L. MAG. & REV. 257, 258 (1903) ("The Romans seem to have attributed an undue value to etymology in law . . . .").

68. 2 AULUS GELLIUS, ATTIC NIGHTS 13.10 (John C. Rolfe trans.).

69. 1 AULUS GELLIUS, ATTIC NIGHTS 1.18 (John C. Rolfe trans.).

70. GAIUS, INSTITUTES 1.99 (T.L. Mears trans.) ("We adopt, by the authority of the people, those who are their own masters, which kind of adoption is called arrogation, for the reason that he who adopts is asked, that is to say, interrogated, whether he desires to have the person whom he intends to adopt as his lawful son; and he who is adopted is asked whether he is willing to have this done; and the assembled people are asked whether they direct this to take place.").

71. *Id.* at 4.132 ("Prescriptions are so called for the reason that they precede the formulas, which fact is perfectly obvious.").

72. *Id.* at 3.90.

rejected in modern times on linguistic grounds."[73] It is nevertheless a convenient mnemonic.

Finally, the most important legal document was the *Corpus Juris Civilis*, compiled at the direction of the Emperor Justinian. This included the *Digest* (or *Pandects*), which collected and organized Roman juristic writings. This famously opened: "A law student at the outset of his studies ought first to know the derivation of the word *jus* [law]. Its derivation is from *justitia* [justice]."[74] The very first line of Roman law is etymology! Subsequent provisions explain the derivations of various words and legal phrases, such as: *contumelia*,[75] *convicium*,[76] *furtum*,[77] *iniuria*,[78] *possessio*,[79] *sanctus*,[80] *servus*,[81] *supellex*,[82] and *vidua*.[83] Many of these are from Labeo. For example, "straddler"

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73. J.M. Kelly, *A Hypothesis on the Origin of Mutuum*, 5 IRISH JURIST 156, 156 (1970).

74. 1 DIGEST OF JUSTINIAN 1.1.1 (Alan Watson trans.) (quoting Ulpian's *Institutes*).

75. 4 DIGEST OF JUSTINIAN 47.10.1 (Alan Watson trans.) (derived from *contemnere*, meaning "despising or deriding").

76. *Id.* at 47.10.15.4 ("The term derives from a mob or gathering, that is, a combination of voices. For when several voices are directed at one person, that is called a shouting, as it were a gathering of voices.").

77. *Id.* at 47.2.1 ("Theft, says Labeo, derives its name from the dark, that is, from black; it is what happens furtively and by stealth, most frequently by night; for Sabinus, it comes from fraud; or it comes from taking and carrying away or from the language of the Greeks who style thieves φῶραι; indeed, the Greeks derive φῶραι from ἀπὸ τον φέρειν (to take away).").

78. *Id.* at 47.10.1 ("Iniuria ex eo dicta est, quod non iure fiat," translated as "Wrong is so called from that which happens not rightly . . . .").

79. *Id.* at 41.2.1 ("Possession is so styled, as Labeo says, from 'seat,' as it were 'position,' because there is a natural holding, which the Greeks call κατοχὴ by the person who stands on a thing.").

80. 1 DIGEST OF JUSTINIAN, *supra* note 74, at 1.8.8 (from *sagmina*).

81. *Id.* at 1.5.4.2–3 ("Slaves (*servi*) are so-called, because generals have a custom of selling their prisoners and thereby *preserving* rather than killing them: and indeed they are said to be *mancipia*, because they are *captives* in the hand (*manus*) of their enemies.").

82. 3 DIGEST OF JUSTINIAN 33.10.7 (Alan Watson trans.) ("Labeo says that the origin of the word *supellex* was that it was once the custom to hire to those who were setting out on an embassy those articles which would be of use to them in tents (*sub pellibus*).").

83. 4 DIGEST OF JUSTINIAN, *supra* note 75, at 50.16.242.3 (widow derived from being alone).

(*prevaricator*) is a man "who helps the other party by betraying his own side."[84] "Labeo says that the name is derived from *varia certatione* (contending on different sides); for the prevaricator has stood on both sides, or rather on the opposing one."[85]

The second component of the *Corpus* was the *Institutes*. This was a short summary of Roman law but used etymology to explain basic concepts (often borrowing from Gaius).[86] For example, the "[c]ivil law takes its name from the state [(*civitas*)] which it governs."[87] The "jus honorarium" is named after "those who bear honors [i.e., offices] in the state, that is, the magistrates, have given them their sanction."[88] Slaves are also called "*mancipia*, because they are taken from the enemy by the strong hand."[89] Tutors "take their name from the nature of their office" as "protectors (*tuitores*)."[90] Etymologies were even provided when they were quite uncertain. "The word *furtum* [(theft)] comes either from *furvum*, which means 'black,' because it is committed secretly, and often in the night; or from *fraus*; or from *ferre*, that is 'taking away,' or from the Greek word φώρ, meaning a thief, which again comes from φέρειν, to carry away."[91]

Of course, not all of these have stood the test of time. The Digest claimed that "pledge" (*pignus*) derives from "fist" (*pugnus*),[92] but modern scholarship derives this

84. 1 DIGEST OF JUSTINIAN, *supra* note 74, at 3.2.4.4.

85. *Id.*

86. *See, e.g.*, 1 INSTITUTES OF JUSTINIAN 1.2.2 (Thomas Collett Sandars trans., Chicago Callaghan & Co. 1st American ed. 1876) ("Romans are called Quirites from Quirinus"). This includes the example *meo tuum*. *Id.* at 3.14.0.

87. *Id.* at 1.2.2.

88. *Id.* at 1.2.7.

89. *Id.* at 1.3.3.

90. *Id.* at 1.13.2.

91. *Id.* at 4.1.2; *cf.* 4 DIGEST OF JUSTINIAN, *supra* note 75, at 47.2.1; *see also* 1 INSTITUTES OF JUSTINIAN, *supra* note 86, at 1.10.12 ("and are therefore called *spurii*, either from a Greek word σποράδην, meaning 'at hazard,' or as being *sine patre*, without a father").

92. 4 DIGEST OF JUSTINIAN, *supra* note 75, at 50.16.238.2.

from "to fasten" (*pango*).[93] Examples like these have prompted one commentator to opine: "The Romans as a rule were far from being experts in the science of Etymology, and many of their attempts at seeking the derivation of words were quite weird and fantastic and even bordered upon the absurd."[94] But etymology is difficult; even today, scholars report competing views.[95]

For our purposes, it suffices to show that the Romans endorsed the use of etymology in legal arguments (Cicero), did in fact use etymological arguments in legal cases (e.g. Caelius), formalized etymology as a branch of grammar (Dionysius Thrax), formalized the use of these arguments in rhetoric within the category of "definitions," and included a number of examples in their official codification (*Corpus Juris Civilis*).[96]

C. Medieval Europe

The preeminent work on etymology from this period is Isidore of Seville's *Etymologiae*, published in the early seventh century. He defined etymology as "the origin of words, when the force of a verb or a noun is inferred through interpretation."[97] The example he gave was *flumen* (Latin for river) comes from *fluendum*, or "flowing."[98] Of note, he maintained that "The knowledge of a word's etymology often has an indispensable usefulness for interpreting the word, for when you have

93. *See Pignus*, LEWIS & SHORT, https://alatius.com/ls/index.php?l=pignus [https://perma.cc/6X95-C4B2] (last visited Mar. 7, 2026); *cf.* Williams, *supra* note 67, at 261 (listing Digest's etymology among "doubtful or fanciful" etymologies).

94. Melius de Villiers, *Some Roman Juristic Etymologies*, 34 S. AFRICAN L.J. 452, 452 (1917).

95. *Compare* LIVY, *Ab Urbe Condita*, *in* HISTORY OF ROME 1.44 (providing etymology of *pomerium*), *with* Roger Antaya, *The Etymology of Pomerium*, 101 AM. J. OF PHILOLOGY 184, 184–89 (1980) (analyzing etymology of *pomerium*).

96. *Cf.* 4 DIGEST OF JUSTINIAN, *supra* note 75, at 50.16.4 ("Proculus says that by the designation 'name' the thing is meant," translated as *"'nominis' appellatione rem significari proculus ait*.").

97. ISIDORE OF SEVILLE, ETYMOLOGIAE 1.29.1 (Stephen A. Barney et al. eds. & trans., 2006).

98. *Id.*

seen whence a word has originated, you understand its force more quickly. Indeed, one's insight into anything is clearer when its etymology is known."[99]

But he acknowledged that "not all words were established by the ancients from nature; some were established by whim,"[100] and "[h]ence it is the case that etymologies are not to be found for all words, because some things received names not according to their innate qualities, but by the caprice of human will."[101] Yet he provided a number of interesting examples. Of interest, "talkative" (*garrulus*) comes from "jackdaw" (*graculus*), a bird "which constantly chatters with importunate loquacity and is never quiet."[102] The word "translator" (*interpres*) comes from "between" (*inter*) and "parts" (*partes*) "because he is the medium 'between the sides' . . . of two languages when he translates."[103] The word for prudent (*prudens*) comes from seeing far ahead (*porro videns*).[104] Beautiful (*pulcher*) is from skin (*pellis*).[105] Friend (*amicus*) is derived from a "guardian of the spirit" (*animi custos*).[106] Honest (*sincerus*) means "without corruption" (*sine corruptione*).[107]

Many of his examples have relevance to law. A judge (*iuridicus*) is someone who says what the law is (*iura dicere*).[108] Someone who is innocent (*innox*) is called so "because such a one does not harm" (*nocere*).[109] An exile (*exul*) is forced to live "outside his native soil" (*extra solum suum*).[110] The word lord (*dominus*) comes from the

99. *Id.* at 1.29.2.
100. *Id.* at 1.29.3.
101. *Id.* at 1.29.3.
102. *Id.* at 10.114.
103. *Id.* at 10.123.
104. *Id.* at 10.201.
105. *See* Pignus, *supra* note 93.
106. ISIDORE OF SEVILLE, *supra* note 97, at 10.4.
107. *Id.* at 10.242.
108. *Id.* at 10.124.
109. *Id.* at 10.125.
110. *Id.* at 10.84. Modern scholarship indicates the word in fact derives from *ex-* ("out") and the root *sal-* ("to go"), cognate with the Latin *salire* ("to jump"). *See, e.g.*, *Exsul*, LEWIS & SHORT, https://alatius.com/ls/index.php?l=exsul [https://perma.cc/9NEZ-7FAT] (last visited Mar. 7, 2026).

fact that he presides over the household (*domus*).[111] A master (*magister*) is one who stands "greater in station" (*maior in statione*).[112]

One important genre during this period was grammars. Perhaps the most famous was by Donatus. Later scholars heavily commented on this text, including Servius, described by Macrobius as an "expert in etymology,"[113] and Remigius, who etymologized each word in the main text.[114] The second major work was by Priscian, who used composition and derivation to explain the signification of terms.[115]

Other major works in the medieval period include etymologies. The *Suda* (c. 10th century) was a monument of Byzantine scholarship including 30,000 entries in the encyclopedia. The largest lexicon from that era was the *Etymologicon Magnum* (c. 1150), which built off the work of the *Etymologicum Genuinum* (c. 9th century). It was in Constantinople that many works were preserved or annotated. Progressively, these records made their way west, which led to schools of jurists known as the glossators and post-glossators.[116]

Those in the Latin-speaking world needed a way to access these words and ideas in Greek. Thus, Eberhard of Bethune's *Graecismus* (1212) included an eponymous chapter on Greek etymology to help readers understand words of Greek origin that had appeared in culture through the Vulgate and other religious texts.

The same held true for scholars attempting to import Latin concepts into Teutonic languages. In Germany, scholars had to map these concepts onto their culture. As a result, "[t]he first legal scholars proper in the Middle Ages were philologists. They started from

111. *Id.* at 10.65.

112. *Id.* at 10.170.

113. 3 MACROBIUS, *supra* note 11, at 6.9.3.

114. MARK E. AMSLER, ETYMOLOGY AND GRAMMATICAL DISCOURSE 237 (1989).

115. *Id.* at 81–82.

116. *See, e.g.*, Peter Stein, *Justinian's Compilation: Classical Legacy and Legal Source*, 8 TUL. EUR. & CIV. L. F. 1, 2 (1993).

philology and treated the written law texts of the Roman Empire and the Church by the means of philology, and from there proceeded to jurisprudence."[117] One example is Nicholas Wurm's *Blume des Sachsenpiegels*. "At the beginning of his juridical discourses he usually places etymological explanations of the legal terms involved."[118] This has led one commentator to explain: "Such were the ways of juridical etymology in Germany in the period of the reception of Roman law. The harmonization of German and Roman legal institutions was to take its point of departure from their harmonization in etymology."[119]

D. Northern Europe

A similar process played out in northern Europe.[120] The early treatises of Littleton and de Bracton included various etymologies to explain legal concepts.[121] Other authors explicitly endorsed arguments from etymology along the lines of Cicero. This includes Petrus Ramus, who explained that "The etymolog[y] is the interpretation of a word: for words are nothing else but notes of matters signified."[122] Similarly Abraham Fraunce explained, "Notation or etymology, is the interpretation of the word. For words be notes of thinges, and of all words either derivative or compound, you may

117. Guido Kisch, *Juridical Lexicography and the Reception of Roman Law*, 2 SEMINAR (JURIST) 51, 62 (1944) (citing Karl von Amira, *Wie studiert man Rechtswissenschaft?* 9 (1909)).

118. *Id.* at 65.

119. *Id.*

120. *See* PETER GOODRICH, *Ars Bablativa: Ramism, Rhetoric, and the Genealogy of English Jurisprudence*, *in* LEGAL HERMENEUTICS: HISTORY, THEORY, AND PRACTICE 43–69 (Gregory Leyh ed., 1990).

121. *See, e.g.*, 2 HENRY DE BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND 30 (Samuel E. Thorne trans.) ("servitude," "mancipia," "manumitti"), 32 ("baron"), 40 ("theatre," "stadium"), 340 ("homicide"); 3 HENRY DE BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND 61 (Samuel E. Thorne trans.) ("boundary"), 167 ("common"); THOMAS LITTLETON, LITTLETON'S TENURES 2.2 (Eugene Wambaugh ed., 1903) ("fealty"), 2.3 ("escuage"); 3.5.332 ("mortgage").

122. PETRUS RAMUS, THE LOGIKE OF THE MOST EXCELLENT PHILOSOPHER 51 (1581).

yield some reason set from the first arguments, if the notation be well made."[123]

Around the same time, John Doddridge published his *English Lawyer* (1631), which formed a manual for students. This included a lengthy introduction to arguments from etymology or *ex vi verbi* (to quote "Tully").[124] He explained that "etymologies are most used by the Authors of our Lawes in their Treatises and Tracts."[125] He collected over a dozen examples from de Bracton, Glanville, and other sources: *college*, *executor*, *judgment*, *prebend*, *verdict*, *action*, *damnum*, *confirmation*, *surrender*, *writ*, *fine*, *remitter*, *mortmaine*, *rent*.[126] He argued that "Etymologies, if they be rightly used . . . do not only yield an Argument of good consequence, but also offer much illustration and delight."[127] But he also cautioned that "these derivations are not to be observed in every word,"[128] and that "Arguments from Etymology are not to be used at all times and upon all occasions, but rarely, and where necessity doth require."[129] To this, he added "*antilexis*," which is "when an obscure word is explained by another more familiar or better known: This is performed when an English word is expounded by a Latine word, or in any

123. ABRAHAM FRAUNCE, THE LAWIERS LOGIKE, EXEMPLIFYING THE PRAECEPTS OF LOGIKE BY THE PRACTISE OF THE COMMON LAWE 51 (1588). After producing a number of examples, he added:

> I have purposefully inserted a number of notations, for that I would make it plain, how the notion of the thing is often times expressed by the notation of the word, contrary to the prejudicated opinion of some silly penmen, and illogical lawyers, who think it a fruitless point of superfluous curiosity to understand the words of a man's own profession.

Id. at 56.

124. JOHN DODDRIDGE, THE ENGLISH LAWYER 66–67 (1631); CICERO, *supra* note 45, at 2.2; *cf.* CICERO, *supra* note 45, at 2.8.35–36 ("*ex vi nominis*"). I have modernized spelling from Doddridge when quoting.

125. DODDRIDGE, *supra* note 124, at 76.

126. *Id.* at 67–70.

127. *Id.* at 75 (language modernized).

128. *Id.*

129. *Id.* at 76.

other language from whence the word was first derived."[130]

Edward Coke's writings are an anthology of etymologies.[131] For example, he explained that the word *assise* "properly commeth of the Latin word *assideo*, which is to associate or set together; so as properly assise is an association or sitting together."[132] Just within the first volume of his *Institutes*, he also derived: *alien*,[133] *ancestor*,[134] *arraiare*,[135] *appeal*,[136] *apportioned*,[137] *bailife*,[138] *bercaria*,[139] *bordarii*,[140] *calumniator*,[141] *chevage*,[142] *concluded*,[143] *deane*,[144] *defence*,[145] *demurrer*,[146] *discent*,[147] *disparagement*,[148] *downs*,[149] *eschaeta*,[150] *estovers*,[151] *fealty*,[152] *fee*,[153] *firma*,[154]

130. *Id.* at 71.

131. As one founding-era decision noted, he "seldom" gives "no etymology" for the concepts he described. Livermore v. Bagley, 3 Mass. 487, 492 (1807).

132. 1 EDWARD COKE ET AL., COMMENTARY UPON LITTLETON 153.b (1853).

133. *Id.* at 118.b (from Latin *alienare*).

134. *Id.* at 78.b (from Latin *antecessor*).

135. *Id.* at 156.a (from French *arroier*).

136. *Id.* at 123.b (from French *appeller*).

137. *Id.* at 147.b (from Latin *portio*).

138. *Id.* at 61.b (deriving from Saxon rather than from French *baylife* or Latin *ballivus*).

139. *Id.* at 5.b (from Saxon *berc* meaning "barkes or rindes of trees").

140. *Id.* at 5.b (from French *borde* meaning cottage).

141. *Id.* at 155.b (disputing common understanding).

142. *Id.* at 140.a (from French *chiefe*).

143. *Id.* at 37.a (from Latin verb *concludo*, in turn from *con* and *claudo* "to determine, to finish, to shut up, to estoppe or barre a man to plead or claime any other thing").

144. *Id.* at 95.a (from Greek δεκα meaning ten).

145. *Id.* at 127.b (from Latin *defendo*).

146. *Id.* at 71.b (from Latin *demorari* to abide).

147. *Id.* at 14.a (from Latin *descendo*).

148. *Id.* at 80.a (from Latin *disparago*).

149. *Id.* at 4.b (towns ending in *-dun* and *downs* come from the old French *dun*).

150. *Id.* at 92.b (from *eschier*).

151. *Id.* at 41.b (from French *estover*).

152. *Id.* at 67.b (from Latin *fides* or *fidelitas*).

153. *Id.* at 1.b (from French *fief*).

154. *Id.* at 5.a (from Saxon *feormian*).

forisfactus,[155] *feoffment*,[156] *homage*,[157] *lease*,[158] *maremium*,[159] *mariscus*,[160] *marshall*,[161] *mayhem*,[162] *mesuagium*,[163] *mora*,[164] *ordinance*,[165] *praerogativa*,[166] *record*,[167] *reeve*,[168] *reserving*,[169] *replevin*,[170] *roncaria*,[171] *runcinus*,[172] *seised*,[173] *selio*,[174] *seneschallus*,[175] *statute*,[176] *steward*,[177] *taillium*,[178] *tenant*,[179] *vaccaria*,[180] *vicinetum*,[181] and *waste*.[182] In many of these cases, Coke was mapping these unfamiliar terms to known concepts in Latin or French.

One particularly influential example of an etymological argument is *Reniger v. Fogossa*, decided in 1551.[183] The case concerned the meaning of the phrase

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155. *Id.* at 59.a (from Latin "*fores* (that is) *extra*").

156. *Id.* at 9.a (from Latin *feodum*).

157. *Id.* at 64.b (from Latin *[a] homo* "because when he doth this service, he saith *Jeo deveigne vostre home; I become your man*").

158. *Id.* at 43.b (from Saxon *leapum* or *leasum*).

159. *Id.* at 53.a (from French *marreim* or *marrein*).

160. *Id.* at 5.a (from French *mares*).

161. *Id.* at 74.a (giving competing etymologies).

162. *Id.* at 126.a–b (from French *mehaigner*).

163. *Id.* at 5.b (from French *mese*).

164. *Id.* at 5.a (from English *moore*).

165. *Id.* at 159.b (from Latin *ordinare* "to ordaine or set in order").

166. *Id.* at 90.b (from Latin *prae* and *rogare*).

167. *Id.* at 117.b (from Latin *recordor* to keep in mind).

168. *Id.* at 61.b (from Saxon *gerefa* or *gereve* "and by contraction or rather corruption *greve* or *reve*").

169. *Id.* at 143.a (from Latin *reservo*).

170. *Id.* at 161.a (from *replegiare* meaning "to redeliver to the owner upon pledges or suretie").

171. *Id.* at 5.a (from French *roncier*).

172. *Id.* at 149.a (from Italian *roncino*).

173. *Id.* at 17.a (from French *seisin* meaning possession).

174. *Id.* at 5.b (from French *sellon* meaning ridge).

175. *Id.* at 61.a (from *sein* and *schale*).

176. *Id.* at 126.a (from Latin *statutum*).

177. *Id.* at 61.a–b (giving competing etymologies).

178. *Id.* at 19.a (from French *tailler*).

179. *Id.* at 1.a (from Latin *teneo*).

180. *Id.* at 5.b (from Latin *vacca* meaning cow).

181. *Id.* at 158.b (from Latin *vicinus* meaning neighborhood).

182. *Id.* at 52.b (from Latin *vastum*).

183. Reniger v. Fogossa (1551), 75 Eng. Rep. 1 (Exchequer Chamber).

"agreed with" as it appeared in a statute.[184] Serjeant Pollard, one of the parties, argued:

> as to the definition of the word (*agreement*) it seems to me that *aggreamentum* is a word compounded of two words, viz. (b) of *aggregatio* and *mentium*, so that *aggreamentum est aggregatio mentium in re aliqua facta vel facienda*. And so by the contraction of the two words, and by the short pronunciation of them they are made one word, viz. *aggreamentum*, which is no other than a union, collection, copulation, and conjunction of two or more minds in any thing done or to be done.[185]

In fact, *agreement* comes via Anglo-Norman from *agréer* ("agree") and *-ment* (suffix forming nouns from verbs to denote result of action).[186] But this "faulty etymology" would cast a long shadow. It was cited in editions of John Rastell's influential *Les Termes de la Ley*[187] and Giles Jacob's *New Law Dictionary*.[188] Indeed, even though this "ridiculous" derivation was disproved as early as 1626,[189] it has even been cited in modern times as requiring a "meeting of the minds."[190]

As this suggests, this era began to see the proliferation of useful legal dictionaries. In 1607, Cowell

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184. *See id.* at 14–15, 17, 27; *see also* E. Allan Farnsworth, *"Meaning" in the Law of Contracts*, 76 YALE L.J. 939, 943–44 (1967) (analyzing case).

185. *Reniger*, 75 Eng. Rep. at 27.

186. *Agreement, n.*, OXFORD ENGLISH DICTIONARY (Dec. 2025), https://www.oed.com/dictionary/agreement_n [https://perma.cc/D3H5-YQJB].

187. *See* JOHN RASTELL, LES TERMES DE LA LEY (1527). His son William Rastell translated this in 1563 with the title *An Exposition of Certaine Difficult and Obscure Words and Termes of the Lawes of this Realme*. JOHN RASTELL, AN EXPOSITION OF CERTAINE DIFFICULT AND OBSCURE WORDS, AND TERMES OF THE LAWES OF THIS REALME 31–33 (William Rastell trans., 1742) (discussing "agreement").

188. GILES JACOB, THE NEW LAW DICTIONARY 22 (1729).

189. R.M. Jackson, *The Scope of the Term 'Contract'*, 53 L.Q. REV. 525, 526 n.5 (1937).

190. Farnsworth, *supra* note 184, at 943. Farnsworth provides the following examples: 1 CORBIN § 106; *Bruce v. Pearson*, 3 Johns. 534, 535 (N.Y. Sup. Ct. 1808). *Id.* at 940 n.7, 944 n.28. In his treatise, Farnsworth adds that "[d]iscussions of this topic would be improved if this much-abused metaphor were abandoned." 1 E. ALLEN FARNSWORTH, FARNSWORTH ON CONTRACTS § 3.6, at 209 n.1.

published *The Interpreter, or Booke Containing the Signification of Words*.[191] Thomas Blount published *Law Dictionary and Glossary* in 1670, which "devoted far more to etymology."[192] Eventually, legal dictionaries would come to form miniature legal textbooks as seen in Jacob's dictionary in 1729, which he advertised as "contain[ing] the Derivations and Definitions of Words and Terms used in the LAW" as well as additional materials extracted from other books.[193] Bailey's *An Universal Etymological English Dictionary* was first published in 1721.[194]

In parallel, many jurists of this period relied on etymology. Hugo Grotius began his landmark *De Jure Belli ac Pacis* with a derivation and exegesis:

> In treating of the rights of war, the first point, that we have to consider, is, what is war, which is the subject of our inquiry. . . . This agrees very well with the true derivation of the word. For the Latin word, *Bellum*, war, comes from the old word, *Duellum*, a duel, as *Bonus* from *Duonus*, and *Bis* from *Duis*. Now *Duellum* was derived from *Duo*; and thereby implied a difference between two persons, in the same sense as we term peace, unity, from *Unitas*, for a contrary reason. So the Greek word, πόλεμος,

191. JOHN COWELL, THE INTERPRETER, OR BOOKE CONTAINING THE SIGNIFICATION OF WORDS (1607).

192. J.D. Cowley, *Some Early Dictionaries of English Law*, 36 JURID. REV. 165, 168 (1924).

193. GILES JACOB, *Preface to* A NEW LAW DICTIONARY, at preface (1729). Giles was immortalized by Alexander Pope in a reference in his *Dunciad*. ALEXANDER POPE, THE DUNCIAD 3.149–50 (1788) ("Jacob, the scourge of Grammar, mark with awe; Nor less revere him, blunderbuss of Law").

194. NATHAN BAILEY, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (1721). The preface advertises it "comprehend[s] The Derivations of the Generality of Words in the *English* Tongue, either ancient or modern, from the Ancient *British*, *Saxon*, *Danish*, *Norman* and Modern *French*, *Teutonic*, *Dutch*, *Spanish*, *Italian*, *Latin*, *Greek*, and *Hebrew* languages." *Id.* at preface. Bailey explains "[t]hat Languages are liable to Mutations and Changes (besides that Ancient Mutation of Tongues at the Building of the Tower of Babel) there have been too many Instances to require any Proof," but his dictionary can aide as "an interpreter of hard words." Nathan Bailey, *Introduction to* NATHAN BAILEY, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (1721); BAILEY, *supra*, at 1.

> commonly used to signify war, expresses in its original, an idea of multitude.[195]

This derivation has stood the test of time. It also illustrates how the best way to understand a subject is to start with its etymology.

In 1758, Vattel published his *Le Droit des Gens*.[196] This included the following observation in the context of interpreting ancient treaties:

> Languages incessantly vary; and the signification and force of terms changes with time. When, therefore, an ancient deed is to be interpreted, we should be acquainted with the common use of the terms at the time when it was written; and that knowledge is to be acquired from deeds of the same period, and from contemporary writers, by diligently comparing them with each other. This is the only source from which to derive any information that can be depended on. The use of the vulgar languages being, as every one knows, very arbitrary—etymological and grammatical investigations, pursued with a view to discover the true import of a word in common usage, would furnish but a vain theory, equally useless and destitute of proof.[197]

Vattel's analysis is premised on three assumptions. First, as a matter of jurisprudence, originalist principles should control the interpretation of legal texts. This requires ascertaining how the words were understood at the time in common usage. Second, as a matter of linguistics, Vattel is a conventionalist: languages are arbitrary. Third, words are constantly evolving, and the rate of this evolution is especially pronounced in vernacular languages (in contrast to Latin). Under these conditions, Vattel argued that etymology would be unhelpful—even useless.

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195. HUGO GROTIUS, THE RIGHTS OF WAR AND PEACE 1.1.2 (A.C. Campbell ed., 1901).

196. EMER DE VATTEL, LE DROIT DES GENS (Reproduction of Books I and II of edition of 1758 ed., Carnegie Institute of Washington 1916).

197. EMERICH DE VATTEL, THE LAW OF NATIONS 2.17.272 (A New Edition, Revised, corrected, and enriched with many valuable Notes never before translated into English ed., 1797).

William Blackstone, in contrast, frequently used etymologies to explain the meaning and history of important terms in his *Commentaries on the Laws of England*.[198] For example, he explained that the term "mortgage" comes from the French *mort*, meaning dead, and *gage*, meaning pledge.[199] Other examples include *chattel*,[200] *defence*,[201] *fee*,[202] *escheat*,[203] *estover*,[204] *parliament*,[205] *piepoudre*,[206] *prerogative*,[207] *sheriff*,[208] *tithing-man*,[209] and *tort*.[210] Several of these track Coke, such as the explanation of *assise*.[211]

One reason for this different approach may be the linguistic context. Stationed in Switzerland, Vattel was writing in French about vernacular languages; Blackstone, on the other hand, was writing in English about legal terms often fossilized in Latin or Anglo-Norman. He explained that in England, Latin "succeeded

198. Williams argues that he "seldom or never frames his own etymologies, he generally adopts those of Bracton, Coke, or Spelman." Williams, *supra* note 67, at 266–67.

199. *See* 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *157 (3rd ed., Callaghan & Co. 1884) (describing *mortuum vadium*).

200. *Id.* at *385–86.

201. 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *296–97 (3rd ed., Callaghan & Co. 1884).

202. 1 BLACKSTONE, *supra* note 199, at *105–07 (describing history of term).

203. *Id.* at *244–45 & n.w ("The word itself is originally French or Norman, in which language it signifies chance or accident" from "*Eschet* or *echet*, formed from the verb *eschoir* or *echoir*, to happen.").

204. *Id.* at *35 ("from *estoffer*, to furnish").

205. *Id.* at *147 ("derived from the French, and signifying an assembly that met and conferred together").

206. 2 BLACKSTONE, *supra* note 201, at *32 ("The lowest, and at the same time the most expeditious, court of justice known to the law of England, is the court of *piepoudre*, *curia pedis pulverizati*: so called from the dusty feet of the suitors; or according to Sir Edward Coke, because justice is there done as speedily as dust can fall from the foot. . . . But the etymology given us by a learned modern writer is much more ingenious and satisfactory; it being derived, according to him, from *pied puldreaux*, (a pedlar, in old French), and therefore signifying the court of such petty chapmen as resort to fairs or markets.").

207. *Id.* at *239 (derived from *prae* and *rogare*, meaning before and ask).

208. *Id.* at *328 ("derived from two Saxon words, scir gerefa, the reeve, bailiff, or officer of the shire").

209. *Id.* at *114 (among other words that "speak their own etymology").

210. *See* 2 BLACKSTONE, *supra* note 201, at *117.

211. *Id.* at *184–85.

the French for the entry and enrollment of pleas, and . . . continued in use for four centuries" until it became "a very universal dialect."[212] As a result, legislators in northern Europe consciously enacted laws framed in this language "as being more durable and more generally known . . . than their own Teutonic dialects."[213] The result was "law-latin," which was "calculated for eternal duration, and easy to be apprehended both in present and future times."[214]

In the same era, William Jones made arguably the most celebrated discovery in the history of linguistics.[215] In 1786, this British judge serving in India read his paper to the Royal Asiatic Society in Calcutta, famously concluding:

> The Sanscrit language, whatever be its antiquity, is of a wonderful structure; more perfect than the *Greek*, more copious than the *Latin*, and more exquisitely refined than either, yet bearing to both of them a stronger affinity, both in the roots of verbs and in the forms of grammar, than could possibly have been produced by accident; so strong indeed, that no philologer could examine them all three, without believing them to have sprung from some common source, which, perhaps, no longer exists.[216]

This insight is sometimes considered the beginning of comparative linguistics, which would come to dominate the field of linguistics.

Meanwhile, in France Diderot published his monumental *Encyclopedia*.[217] This included an entry on etymology, which he defined as "the origin of a word."[218]

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212. *Id.* at *319–20.

213. *Id.*

214. *Id.*

215. Incidentally, his father was the mathematician William Jones, who introduced the symbol π for the transcendental number.

216. WILLIAM JONES, *The Third Anniversary Discourse*, *in* 1 THE WORKS OF SIR WILLIAM JONES 26 (1786).

217. 13 DENIS DIDEROT, ENCYCLOPÉDIE, OU DICTIONNAIRE RAISONNÉ DES SCIENCES, DES ARTS ET DES MÉTIERS (Denis Diderot & Jean Le Rond d' Alembert eds., 1778).

218. *Id.* at 323 (defining "etymologie" as "c'est l'origine d'un mot").

Diderot firmly took the conventionalist approach that "words do not have a necessary relationship with what they express."[219] He then announced the Enlightenment's approach to this old science: Etymology is an empirical science that operates by hypothesis and verification. "[T]he origin of a word is generally a fact to be guessed, an unknown fact that can only be reached through conjectures based on some known facts."[220] From this, "It follows that the etymological art, like any conjectural art, is composed of two parts, the art of forming conjectures or suppositions, and the art of verifying them; or in other terms, invention and criticism."[221] Contrary to Vattel, Diderot explained that etymology is

> an absolute necessity when it is necessary to know exactly, not the meaning a word should or must have, but the one it had in the mind of a particular author, at a particular time, in a particular century. Those who observe the progression of the human mind . . . must always proceed with the torch of etymology in hand if they do not want to fall into a thousand errors. . . . Almost all philosophical expressions have changed their meanings; and whenever it is necessary to establish a truth based on the testimony of an author, it is essential to begin by examining the force of his expressions, not in the mind of our contemporaries and ours, but in his and that of the people of his time. This examination, often based on the knowledge of etymologies, constitutes one of the most essential parts of critique.[222]

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219. *Id.* (translation from the French by the author); *accord* 1 SAMUEL JOHNSON, *Cowley*, *in* LIVES OF THE ENGLISH POETS 49 ("[W]ords being arbitrary must owe their power to association, and have the influence, and that only, which custom has given them. Language is the dress of thought.").

220. 13 DIDEROT, *supra* note 217, at 324 (translation from the French by the author).

221. *Id.* at 324 (translation from the French by the author).

222. *Id.* at 344–45 (translation from the French by the author); *cf. id.* at 341 ("The philosophical history of the human mind in general and of human ideas, of which languages are both the expression and the measure, is another precious fruit of this theory.") (translation from French by the author).

Diderot had in mind philosophers and theologies trying to interpret ancient texts, but the same principle holds for lawyers trying to interpret the law.

This was the state of learning when America declared its independence. English legal texts in particular relied heavily on etymology to explain arcane legal terms developed under the Normans. In 1791, the States ratified the U.S. Constitution. That same year, James Wilson—a signatory to the Declaration of Independence and Constitution and then a Supreme Court Justice—delivered the first lectures on the new document as a professor at the University of Pennsylvania. In these inaugural lectures, he explained that "[i]n order to ascertain the true meaning, it is frequently of importance to ascertain the true etymology, of a term."[223] Curiously, according to some measurements, references to "etymology" exploded starting in 1744, peaked in 1775, and continued through 1880 before decreasing and stabilizing to present levels.

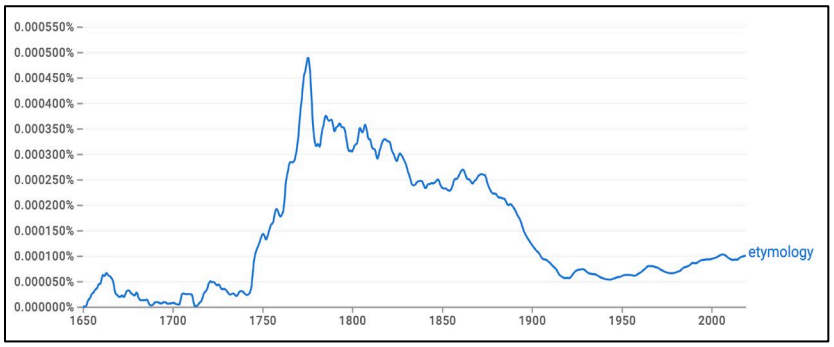

Figure 1: N-Gram analysis of "Etymology" 1650–2019

223. 3 JAMES WILSON, THE WORKS OF THE HONOURABLE JAMES WILSON 17 (1804); *see, e.g.*, *id.* at 16 ("felony"); *id.* at 17 (characterizing Blackstone's etymology of "fee" as "a still stranger etymology" than that of Coke); *see also* 2 JAMES WILSON, COLLECTED WORKS OF JAMES 344 (looking to "the information of etymology" to conclude that "we shall find no authority to conclude, that, in civil causes, the verdict of a jury must be founded on unanimous opinion").

E. Nineteenth Century

Against this backdrop, it is no surprise that Americans have used etymology in legal interpretation.[224] Many state courts employed etymology around the Founding.[225] This is strong evidence for the legitimacy of this approach under law.[226]

One early example from the U.S. Supreme Court is *United States v. Wiltberger*.[227] The case concerned whether federal law criminalized manslaughter that occurred "in the river Tigris, in the empire of China, off Wampoa, and about 100 yards from the shore."[228] The defendant was charged under Section 12 of the Crimes Act of 1790, which only criminalized "manslaughter upon the high seas."[229] Writing for the Court, Chief Justice

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224. *See, e.g.*, United States v. Smith, 18 U.S. 153, 163 n.h (1820) (quoting Coke's etymology of "pirate"); Spratt's Lessee v. Spratt, 26 U.S. 343, 346 (1828) (litigants debated etymology of "alien").

225. Lovett v. Pell, 22 Wend. 369, 375–76 (N.Y. 1839) ("mispleading"); Langley's Heirs v. Langley's Ex'rs, 12 La. 114, 117 (1838) ("nuncupative"); Lapham v. Curtis, 5 Vt. 371, 377 (1833) ("imminent"); Morgan v. Livingston, 6 Mart.(o.s.) 19, 216 (La. 1819) ("batture"); James v. Commonwealth, 12 Serg. & Rawle 220, 227 (Pa. 1825) ("cucking-stool" and "trebucket"); Commonwealth v. Kneeland, 37 Mass. 206, 239–40 (1838) (consulting etymology of "blasphemy" but finding this unhelpful); Kibbe v. Antram, 4 Conn. 134, 137 (1821) ("minister"); Blair v. Williams, 14 Ky. 34, 36 (1823) ("obligation"); Booth v. State, 4 Conn. 65, 67 (1821) ("built" and "erected"); Commonwealth v. Morrison, 9 Ky. 75, 81 (1819) ("necessary"); Commonwealth v. Clarke, 8 Ky. 323, 324 (1818) ("prosecution"); People v. Goodwin, 18 Johns. 187, 191 (N.Y. Sup. Ct. 1820) ("jeopardy"); Ex Parte Meason, 5 Binn. 167, 175 (Pa. 1812) ("servants"); Livermore v. Bagley, 3 Mass. 487, 491 (1807) ("convey"); Pringle v. McPherson, 2 S.C. Eq. 524, 543 (S.C. Ch. 1807) ("family"); Comm'rs of Pub. Accts. v. Boquet, 1 S.C. Eq. 599, 601 (S.C. Ch. 1795) ("prerogative"); *see also* The Ulysses, 24 F. Cas. 515 (C.C.D. Mass. 1800) (noting in the synopsis that litigants debated the etymology of "felony" with "much learning and ingenuity"). *But see* Brown v. Hartford Ins. Co., 3 Day 58, 60 (Conn. 1808) ("We are not, then, to look to the etymology of the word for its construction; for from the arbitrary use and fluctuation of language, the popular meaning of words differs much from that of the root from whence they are derived.").

226. *See* William Baude & Stephen E. Sachs, *The Law of Interpretation*, 130 HARV. L. REV. 1079, 1104–15 (2017) (characterizing rules of interpretation as a form of unwritten law).

227. 18 U.S. 76, 106 (1820).

228. *Id.* at 77.

229. *Id.* at 78 n.a; An Act for the Punishment of Certain Crimes Against the United States, ch. 9, 1 Stat. 112 (1790).

Marshall invoked the "rule that penal laws are to be construed strictly"[230] and held that Congress had not criminalized the conduct at issue (which occurred on a river, rather than "on the high seas").[231] At the end of the opinion, he appended a 4,108-word footnote addressing the important constitutional question whether the Court's jurisdiction under Article III—which extended "to all cases of admiralty and maritime jurisdiction"—included not only civil but also criminal admiralty law.[232]

The answer turned on the meaning of "admiralty." The Chief Justice began his analysis by noting that:

> The etymology of the word serves to indicate the origin of the office, and the time when it was introduced, at least under that name, into Europe. The word *admiral* or *ammiral*, is doubtless derived from the Arabic word *emir* or *amira*, signifying a general officer or commander in chief, *dominum vel praefectum*.[233]

He ultimately concluded, in dicta, that the Court enjoyed jurisdiction over criminal cases under admiralty law but emphasized that the narrow question before the Court was only whether Congress had in fact criminalized the conduct at issue in the case.[234]

Ten years later, the Supreme Court decided *Patapsco Insurance Co. v. Coulter*,[235] which concerned the scope of coverage in a maritime insurance contract. The insurer alleged that the captain caused a fire and failed to exercise reasonable care to extinguish it.[236] The question was whether this constituted "barratry," with the result that the insurer would not be liable to cover the damage.[237] In answering this question, Justice Johnson engaged in the following discursion:

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230. *Wiltberger*, 18 U.S. at 95.
231. *Id.* at 105–06.
232. *Id.* at 106 n.w.
233. *Id.*
234. *Id.*
235. 28 U.S. 222, 230 (1830).
236. *Id.* at 228–30.
237. *Id.* at 228.

> It cannot be denied, that what with adjudged cases and elementary opinions, this doctrine has got into a great deal of confusion. Many attempts have been made to define the term barratry, in its marine sense; but when compared with the ideas attached to the word, as derived from the most respectable sources, such definitions will too generally be found deficient in precision or comprehensiveness; they need commentaries to apply or explain them. And it is remarkable, that the point in which all the definitions in the English or American authorities agree; to wit, that fraud must be a constituent of the act of barratry; is that in which practically all the difficulties arise. The question seems to be between "dolus" and "culpa," which of those two words best conveys the sense of the law.
>
> It cannot be denied that the etymology of the word favours the adoption of the former. The term barratry is known to the common law; and Cowel's Interpreter refers its origin to a Latin word, which would attach to it the idea of meanness, selfishness, and knavery. Some of our English books, following a French writer, (Pasquier sur Emerigon,) derive it from "barat," an old Franch or Italian word, which they explain by "tromperie, fourbe, mensonge."
>
> I should myself derive the word from the Spanish barateria, baratero, which are rendered fraus, and fraudulentus. But it is worthy of particular notice, that writers on maritime law of the first respectability (I think Emerigon, gives six in number) in explaining the marine sense of the word barratry, use the French word "prevariquez," which can only be translated into "acting without due fidelity to their owners." The best French dictionary we have renders it by "agir contre les devoirs de son charge," acting contrary to the duties of his undertaking, and "trahir la cause ou l'interet des personnes qu'on est obligé de defendre," to betray the cause or interest of those whom we are bound to protect.[238]

238. *Id.* at 230.

Many aspects of this analysis deserve remark. First, the Court engaged at length in etymological analysis to understand the scope of the common law doctrine. Second, the Court found dictionary definitions to be too generic and then sought further precision in the word's etymology. Third, the Court did not merely look to the concepts behind the word's formation but sought to map the concept of "barratry" onto better known Latin concepts. In this sense, etymology can serve as a mapping from indefinite terms in one language, culture, or legal system to better understood terms in older systems. Fourth, the Court ascribed a definition to barratry based on the definition of the Latin root. Fifth, the Court was equipped with the resources of an influential etymological dictionary and so capable of etymological research—and yet the Court also independently speculated on the proper etymology.

Similarly, in *Smith v. Turner*, the Supreme Court invalidated state laws taxing immigrants on the theory that such taxes were preempted by the Commerce Clause.[239] In reaching this conclusion, the Court explained: "*Commerce*, from *con* and *mercis*, critically signifies a mutual selling or traffic, and in ordinary and practical acceptation it means trade, bargain, sale, exchange, barter; embracing these both as its means and its objects."[240] Indeed, commerce was expanding rapidly thanks to the invention of new technologies from the railroad to the telegraph, which introduced new terms to the lexicon. To define them, courts resorted to etymology.[241]

Etymology even appeared in *Dred Scott*.[242] In his separate opinion, Justice Daniel opined "[u]pon a principle of etymology alone, the term citizen, as derived from civitas, conveys the ideas of connection or

239. 48 U.S. (7 How.) 283, 500 (1849).

240. *Id.* at 500–01.

241. *See* Bridge Proprietors v. Hoboken Co., 68 U.S. 116, 147–48 (1863) ("railroad"); O'Reilly v. Morse, 56 U.S. 62, 134 (1853) ("telegraph").

242. Scott v. Sandford, 60 U.S. (19 How.) 393, 476 (1857) (Daniel, J., concurring).

identification with the State or Government, and a participation of its functions."[243]

In this period, American jurists also explicitly advocated using etymology to interpret statutes.[244] One representative was Francis Lieber, most famous today for his codification of customary law.[245] When interpreting legal texts, he explained:

> A single word may signify indeed several things, and in order to determine in which sense it has been used in a particular passage, we shall be obliged, as a matter of course, to use grammar, etymology, logic, and every other means, which are in constant use among men, to understand the words of one another.[246]

He carefully distinguished circumstances where etymology would be appropriate and inappropriate. On the one hand, "We have to take words, then, in their most probable sense, not in their original, etymological, or classical, if the text be such that we cannot fairly suppose the author used the words with skill, knowledge, and accurate care and selection."[247] On the other hand, if the

> object is scientifically to settle which signification we ought to give to a word . . . etymology is frequently of much importance; for if it does not unfold to use the entire and present signification of a word, the origin and history of a word will, nevertheless, shed considerable light upon its signification in many instances.[248]

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243. *Id.*

244. Other examples include: *Gilman v. Inman*, 26 A. 1049, 1050 (Me. 1892) ("commorant"); *Reed v. Garr*, 59 Ind. 299, 300 (1877) ("endorsement"); *Pychinka v. Keystone Home Improvement Co.*, 4 Pa. D. & C.2d 492, 493–94 (Pa. Com. Pl. 1956) ("guarantee" and "warranty"); *Bryan v. Walton*, 14 Ga. 185, 201 (1853) (etymology of "manumission").

245. *See* U.S. Dep't of War, Headquarters, Gen. Orders No. 100 (April 24, 1863) (also known as the Lieber Code).

246. FRANCIS LIEBER, LEGAL AND POLITICAL HERMENEUTICS, OR PRINCIPLES OF INTERPRETATION AND CONSTRUCTION IN LAW AND POLITICS 75 (1839); *see also id.* at 20 n.2 (deriving *interpret*); *id.* at 63 (deriving *construction*); *id.* at 67–68 (deriving *give*).

247. *Id.* at 99.

248. *Id.* at 99 n.1.

He found etymology "especially valuable in settling the precise meaning of synonymes."[249] Overall, he advocated for a balanced approach: "Altogether, etymology is one of the means of arriving at the signification of a word, and must be used as all the others, with common sense and in good faith."[250]

In parallel, other scholars made revolutionary progress in linguistics that marked the advent of modern linguistics. Important developments included the discovery of Grimm's law, which described how consonants systematically changed sounds as they developed in Proto-Germanic.[251] This was named after Jacob Grimm, who also co-authored the monumental *Deutsches Wörterbuch* with his brother—as well as a best-selling collection of folk stories *Kinder- und Hausmärchen*.[252] Karl Verner developed a similar eponymous law.[253] These scholars, together with Rasmus Rask, Franz Bopp, August Schleicher, August Pott, and others, were able to develop modern methods that formed a scientific approach to linguistics.[254]

Standing on these shoulders, the English scholar Walter Skeat published his *Etymological Dictionary of the English Language* in 1879. This was a highly significant work in the field of lexicography and etymology, significant for its comprehensive coverage and scholarly rigor. Skeat followed this project with his

249. *Id.*

250. *Id.*

251. JACOB GRIMM, DEUTSCHE GRAMMATIK (1822); JACOB GRIMM, GESCHICHTE DER DETUSCHEN SPRACHE (1848); *see also* RASMUS RASK, A GRAMMAR OF THE ICELANDIC OR OLD NORSE TONGUE (George Webbe Dasent trans., 1843); Pavel Iosad, *Ogres are Cool*, 47 LONDON REV. BOOKS (May 22, 2025), https://www.lrb.co.uk/the-paper/v47/n09/letters [https://perma.cc/4TBH-UVU7].

252. For our purposes, it is interesting to note that the brothers were especially inspired by the great jurist Friedrich Carl von Savigny, whom they credited in the preface to their dictionary.

253. Karl Verner, *Eine Ausnahme der ersten Lautverschiebung*, 23 ZEITSCHRIFT FÜR VERGLEICHENDE SPRACHSFORSCHUNG AUF DEM GEBIETE DER INDOGERMANISCHEN SPRACHEN 97 (1875).

254. *See, e.g.*, AUGUST POTT, ETYMOLOGISCHE FORSCHUNGEN AUF DEM GEBIETE DER INDOGERMANISCHEN SPRACHEN (1833).

The Science of Etymology, which announced that "It is now possible to introduce science where once there was little but guesswork."[255] He thought it would be "very difficult for the general public to appreciate, or even to ascertain, the great advances that have been made of late years in the study of etymology" whereby "what used to be a matter of guesswork or arbitrary suggestion has been largely reduced to law and order."[256] The work repeatedly references "laws" of etymology, such as Grimm's law and Verner's law.[257] Importantly, it made the fruits of these discoveries readily available to the public.

Shortly after, William Dwight Whitney at Yale published his *Language and the Study of Language*.[258] This work began with the premise that every word "is separately exposed to the changes and vicissitudes of linguistic life, is modified, recombined, or dropped, according to its own uses and capacities."[259] But for this reason, Whitney argued that "etymology, the historical study of individual words, is the foundation and substructure of all investigation of language."[260] For Whitney, etymology was not simply the process of identifying the original roots but encompassed investigating every nuanced change in meaning. To investigate this continuous historical process required, ironically enough, the skill of a judge.

> [E]very etymological question is strictly a historical one; it concerns the steps of a historical process, as shown by historical evidences; it implies a judgment of the value of testimony, and a recognition of the truth fairly deducible therefrom. What is proved respecting the origin and changes of each particular word by all the evidence within reach, is the etymologist's ever-recurring inquiry. To answer it

255. WALTER W. SKEAT, THE SCIENCE OF ETYMOLOGY iii (1970).

256. *Id.* at 1.

257. *See, e.g.*, *id.* at 15–16, 19, 22, 51, 63, 93, 98, 126, 146–49, 178.

258. WILLIAM DWIGHT WHITNEY, LANGUAGE AND THE STUDY OF LANGUAGE (1884).

259. *Id.* at 55.

260. *Id.*

> successfully, he needs a combination of many qualities; he must be, in fact, a whole court in himself: the acuteness, perseverance, and enterprise of the advocate must be his, to gather every particle of testimony, every analogy, every decision, bearing upon the case in hand; he must play the part of the opposing counsel, in carefully sifting the collected evidence, testing the character and disinterestedness of the witnesses, cross-examining them to expose their blunders and inconsistencies; he must have, above all, the learning and candour of the judge, that he may sum up and give judgment impartially, neither denying the right which is fairly established, nor allowing that which rests on uncertain allegation and insufficient proof. In short, the same gifts and habits of mind which make the successful historian of events are wanted also to make the successful historian of words.[261]

If etymology requires the skills of a lawyer, it follows that a lawyer should be well-equipped to engage in this type of inquiry to ascertain the historical meanings of legal terms.[262]

In this spirit, consider the case of *The Britannia*, which adjudicated a collision of two ships.[263] As retold by the Supreme Court, the Beaconsfield expected the Britannia to pass under her stern; she blew her whistle to confirm this; when no reply was heard, the Beaconsfield "stopped her engines, and reversed full speed" so that "at the time of the collision, she was nearly, if not quite, dead in the water."[264] In relevant part, the rules of navigation required the Beaconsfield, under these circumstances, to "keep her course."[265] Writing for the Court, Justice Shiras rejected the argument that "that a vessel whose duty it is to keep her

261. *Id.* at 238–39.

262. Whitney also cautioned "we must beware of ascribing too cogent or too permanent a force to the etymological reason." *Id.* at 127.

263. 153 U.S. 130, 133–37 (1894).

264. *Id.* at 137.

265. *Id.* at 138 (quoting Rule 23).

course complies with that duty by reversing her engines and ceasing to move at all."[266] He elaborated:

> It is inconsistent with both the words and the sense of the rule. A vessel which voluntarily becomes motionless cannot properly be said to keep her course. The word "course," both from its etymology and the primary meaning given to it by lexicographers, signifies a running or moving forward,—a continuous progression or advance.[267]

This alludes to the fact that *course* is derived from the Latin *currere* (to run). At least at law, it is impossible to run in place. The majority thus held that both ships were at fault.[268]

Justice Brown dissented, explaining that he would interpret "course" to mean merely that the ship remained along the same line—regardless of its forward motion.[269] In support of this, he produced three dictionary definitions.[270] On this point, he concluded "unless we are to give to the word 'course' a meaning quite different from that given by the grammarians, we must hold that the steamer discharged her obligation to 'keep her course' by keeping steadily in the direction in which she had been previously going."[271] Yet at least in this case, the majority preferred the word's etymology over its dictionary definition.

F. Twentieth Century

Legal realists placed less emphasis on etymology. Oliver Wendell Holmes, Jr., discussing the law of possession, admonished in his magnum opus: "We are not studying etymology, but law."[272] This may help

266. *Id.* at 141.
267. *Id.* at 141–42.
268. *Id.* at 144.
269. *Id.* at 148 (Brown, J., dissenting).
270. *Id.* (quoting *Webster*, *Worcester*, and *Imperial Dictionary*).
271. *Id.*
272. OLIVER WENDELL HOLMES, JR., THE COMMON LAW 215 (Boston: Little, Brown, and Company 1881).

explain his famous opinion in *McBoyle v. United States*, which addressed whether the National Motor Vehicle Theft Act applied to recently-invented aircraft.[273] The statute referred only to "motor vehicles," defined to "include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails."[274] In an oft-quoted line, he explained, "No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air, and sometimes legislation extends the use in that direction."[275] After all, *vehicle* comes from the Latin verb *vehere* (to bear, carry, convey).[276] Yet Justice Holmes rejected the etymological definition, because "in everyday speech 'vehicle' calls up the picture of a thing moving on land."[277]

This approach was consonant with Learned Hand's opinion in *United States v. Oregon-Washington Railroad & Navigation Co.*, interpreting an excise tax.[278] "[T]he tax, though it includes income 'from all sources,' nevertheless includes 'income' only, and the meaning of that word is not to be found in its bare etymological derivation. Its meaning is rather to be gathered from the implicit assumptions of its use in common speech."[279] He then drew an "implied distinction . . . between permanent sources of wealth and more or less periodic earnings."[280] This is one of many examples where "etymological" meaning has been equated with the maximal, literal definition—in contradistinction to a more circumstanced definition that may be appropriate

273. 283 U.S. 25, 25 (1931).

274. National Motor Vehicle Theft Act, ch. 89, 41 Stat. 324 (1919) (codified at 18 U.S.C. § 2313).

275. *McBoyle*, 283 U.S. at 26.

276. *Vehicle, n.*, OXFORD ENGLISH DICTIONARY (Sep. 2025), https://www.oed.com/dictionary/vehicle_n?tab=etymology [https://perma.cc/N4DD-GCRW]; *Věho*, LEWIS & SHORT, https://alatius.com/ls/index.php?met=up&ord=veho [https://perma.cc/JZ2D-JL2A] (last visited Mar. 9, 2026).

277. *McBoyle*, 283 U.S. at 26.

278. 251 F. 211, 212 (2d Cir. 1918).

279. *Id.*

280. *Id.*

given the context. Yet in the context of dictionaries and etymology, Learned Hand will be best remembered for his closing remark in *Cabell v. Markham* that

> Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.[281]

These cases illustrate how legal realists prioritized ordinary meaning, context, and real-world implications over philology. At the same time, it is worth acknowledging that the same courts continued to cite etymologies in other contexts.[282]

G. Modern Era

In recent years, American courts have often looked to etymology in legal interpretation.[283] Justice Scalia employed etymology in *Coy v. Iowa*, which addressed the scope of the Confrontation Clause.[284] That provision of

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281. Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945).

282. *See, e.g.*, *In re* Simon, 297 F. 942, 945 (2d Cir. 1924) (explaining that "the very etymology of the word 'subpoena' signifies 'an order with a penalty for disobedience.'").

283. *See, e.g.*, Evan C. Zoldan, *The Conversation Canon*, 110 KY. L.J. 1, 13 (2022) ("Courts resort to etymological investigation to interpret statutes surprisingly frequently."). In addition to the examples in the main text, see, e.g., *Lucia v. Sec. & Exch. Comm'n*, 585 U.S. 237, 254 (2018) (Thomas, J., concurring) (looking to etymology of "officer" for "Officers of the United States"); *Jaffee v. Redmond*, 518 U.S. 1, 32 n.4 (1996) (Scalia, J., dissenting) (etymology of "privilege"); *Vt. Agency of Nat'l Res. v. United States ex rel. Stevens*, 529 U.S. 765, 774–78 (2000) (explaining history and etymology of "qui tam"); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 520 (1952) (Frankfurter, J., concurring) (analyzing history of "sacrilege"); *Keegan v. United States*, 325 U.S. 478, 501 (1945) (etymology of "evade"); *Mut. Life Ins. Co. v. Hurni Packing Co.*, 263 U.S. 167, 174–75 (1923) (etymology of "date").

284. 487 U.S. 1012, 1020–21 (1988); *see, e.g.*, David Boling, *The Jurisprudential Approach of Justice Antonin Scalia: Methodology over Result?*,

the Constitution guarantees the right of a defendant "to be confronted with the witnesses against him."[285] In the case, the defendant was charged with two counts of lascivious acts with a child.[286] At trial, the jury heard testimony from two 13-year-old victims, who were allowed to testify behind a screen that blocked the defendant's view.[287] The defendant was convicted but appealed that the screen violated his rights under the Sixth Amendment.[288]

Writing for the majority, Justice Scalia held that this process violated the defendant's rights under the Confrontation Clause.[289] Justice Harlan had previously explained that the clause, "[s]imply as a matter of English," confers "a right to meet face to face all those who appear and give evidence at trial."[290] Building on this insight, Justice Scalia added that, "Simply as a matter of Latin as well, since the word 'confront' ultimately derives from the prefix 'con-' (from 'contra' meaning 'against' or 'opposed') and the noun 'frons' (forehead)."[291]

Another example is *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, which turned on the meaning of "modify."[292] Under federal law, the Federal Communications Commission was authorized to "modify" requirements to file tariffs.[293] Again writing for the Court, Justice Scalia rejected petitioners' argument that this section gave "the Commission authority to make even basic and fundamental changes in the scheme created by that section."[294] Instead, he explained that

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44 ARK. L. REV. 1143, 1161 (1991) (describing "Scalia's approach" in the case as "primarily etymological").

285. U.S. Const. amend. VI.

286. *Coy*, 487 U.S. at 1014.

287. *Id.* at 1014–15.

288. *Id.* at 1015.

289. *Id.* at 1022.

290. California v. Green, 399 U.S. 149, 175 (1970) (Harlan, J., concurring).

291. *Coy*, 487 U.S. at 1016.

292. 512 U.S. 218, 225 (1994) (quoting 47 U.S.C. § 203 (1990)).

293. 47 U.S.C. § 203 (1990).

294. *MCI Telecommunications Corp.*, 512 U.S. at 225.

"[t]he word 'modify'—like a number of other English words employing the root 'mod-' (deriving from the Latin word for 'measure'), such as 'moderate,' 'modulate,' 'modest,' and 'modicum'—has a connotation of increment or limitation."[295] Against this backdrop, the Court held that the Commission's actions amounted to "effectively the introduction of a whole new regime of regulation" and therefore exceeded its authority to "modify" the existing tariff regime.[296]

Likewise, in *United States v. Lopez*, the Court held that Congress had exceeded its authority under the Commerce Clause in enacting a criminal law penalizing the possession of a firearm in a school zone.[297] In his concurrence, Justice Thomas explained that "[a]t the time the original Constitution was ratified, 'commerce' consisted of selling, buying, and bartering, as well as transporting for these purposes."[298] He then noted that "[t]his understanding finds support in the etymology of the word, which literally means 'with merchandise' . . . (com-'with'; merci-'merchandise')."[299] He contrasted this with "productive activities such as manufacturing and agriculture."[300] Justice Thomas ultimately found that this was probative of "the relatively limited reach of the Commerce Clause and of federal power generally" at the time the Constitution was ratified.[301]

More recent cases have provided extended discussions. For example, *Muscarello v. United States* concerned a federal criminal law that imposed a mandatory minimum prison term on anyone who "carries a firearm" during and in relation to a drug trafficking crime.[302] The defendant had transported a firearm in the glove compartment of his truck on his way

295. *Id.*

296. *Id.* at 234.

297. 514 U.S. 549, 551 (1995).

298. *Id.* at 585–86 (Thomas, J., concurring) (citing dictionaries).

299. *Id.* at 586 (quoting *Commerce, n.*, OXFORD ENGLISH DICTIONARY (1989), https://www.oed.com/oedv2/00044945 [https://perma.cc/LX87-FEB5]).

300. *Id.*

301. *Id.* at 590.

302. 524 U.S. 125, 126 (1998) (quoting 18 U.S.C. § 924(c)(1)).

to a drug deal.[303] The question was whether this constituted "carrying" a firearm.

Writing for the majority, Justice Breyer held that this qualified as "carr[ying] a firearm" within the meaning of the statute. Of note, he looked to the word's etymology and historical usage. He cited sources explaining that the word "carry" derived from the Latin *carrum*, meaning "car" or "cart," or from the Old French *carier* and the Late Latin *carricare*, meaning "to convey in a car."[304] He combined this with citations to literature and historical dictionaries illustrating how the term "carry" has been used to refer to objects transported on vehicles ranging from chariots, "asses," boats, wheelbarrows, and automobiles.[305] This supported his conclusion that the term "carry," as used in the statute, included petitioner's conduct.

Justice Ginsburg dissented.[306] She acknowledged that the word *carries* "is a word of many meanings, definable to mean or include carting about in a vehicle."[307] But in her view, "that encompassing definition is not a ubiquitously necessary one" and was not "a proper construction of" the term as used in this statute.[308] Invoking the rule of lenity, she "would read the words to indicate not merely keeping arms on one's premises or in one's vehicle, but bearing them in such manner as to be ready for use as a weapon."[309]

Most recently, Justice Thomas employed etymology in explaining his views on standing. In a footnote to his dissenting opinion in *TransUnion LLC v. Ramirez*, he noted that "Etymology is also a helpful guide. The word 'injury' stems from the Latin 'injuria,' which combines

303. *Id.* at 127.

304. *Id.* at 128 (quoting ROBERT K. BARNHART, THE BARNHART DICTIONARY OF ETYMOLOGY 146 (Robert K. Barnhart & Sol Steinmetz eds., H.W. Wilson Co. 1988); *Carry, v.*, OXFORD ENGLISH DICTIONARY (1989), https://www.oed.com/oedv2/00033854 [https://perma.cc/HT2R-AN3L]).

305. *Id.* at 128–29.

306. *Id.* at 139 (Ginsburg, J., dissenting).

307. *Id.* at 140.

308. *Id.*

309. *Id.*

'in' (expressing negation) and 'jus' (right, law, justice)."[310] Thus, a diverse range of Justices—including Justices Scalia, Breyer, and Thomas—have all endorsed the use of etymology to interpret the U.S. Constitution.

Many lower courts have also looked to the etymologies of words.[311] Some have found etymologies to be helpful.[312] Typically, the argument will not be

310. TransUnion LLC v. Ramirez, 594 U.S. 413, 449 n.3 (2021) (Thomas, J., dissenting) (citing ROBERT K. BARNHART, THE BARNHART DICTIONARY OF ETYMOLOGY 529 (Robert K. Barnhart & Sol Steinmetz eds., H.W. Wilson Co. 1988).

311. *See, e.g.*, *In re* Plavix Mktg., Sales Practices & Prods. Liab. Litig. (No. II), 974 F.3d 228, 233 (3d Cir. 2020) (writing for the court, Judge Bibas discusses the etymology of "intervention"); Turner v. United States, 885 F.3d 949, 959 (6th Cir. 2018) (Bush, J., concurring dubitante) (etymology of "prosecutions" in context of Sixth Amendment); United States v. Fontaine, 697 F.3d 221, 226–28 (3d Cir. 2012) (rejecting argument that statute was void for vagueness in part because of etymology of "imitation"); Bloomfield State Bank v. United States, 644 F.3d 521, 523–24 (7th Cir. 2011) (etymology of "choate"); United States v. Park, 536 F.3d 1058, 1062 (9th Cir. 2008) (looking to etymology of "livestock" to interpret state statute); Agro Dutch Indus. Ltd. v. United States, 508 F.3d 1024, 1031–32 (Fed. Cir. 2007) (deriving "affiliate" from Latin *filius* meaning "son"); *In re* Baylis, 313 F.3d 9, 18 (1st Cir. 2002) ("The etymology of the word [defalcation] thus shows the term historically has covered both fraudulent and non-fraudulent acts"); Portillo v. Comm'r of Internal Revenue, 932 F.2d 1128, 1132 (5th Cir. 1991) (etymology of "determine"); De Leon Lopez v. Corporacion Insular de Seguros, 931 F.2d 116, 119 (1st Cir. 1991) (per Selya, J.) (looking to "[s]cholarly sources" for "first English usage of the word 'twin'"); Abney v. Campbell, 206 F.2d 836, 839 (5th Cir. 1953) (etymology of "excise" in Constitution); Nat'l Fire Ins. Co. of Hartford v. Elliott, 7 F.2d 522, 525 (8th Cir. 1925) (etymology of "collide"); Am.-La France Fire Engine Co. v. Riordan, 6 F.2d 964, 967 (2d Cir. 1925) (etymology of "automobile"); United States v. Davis, 54 F. 147, 150 (8th Cir. 1893) (etymology of "tile"); Orr v. Ill. Tool Works, Inc., No. 5:12-CV-4209-CLS, 2014 WL 257375, at *2 (N.D. Ala. Jan. 23, 2014) (holding that "confer" requires an actual meeting because of its "Latin roots *com* meaning 'together' and *ferre* meaning 'to bring'"); Rendelman v. State, 927 A.2d 468, 474 (Md. Ct. Spec. App. 2007), *aff'd* 947 A.2d 546 (Md. 2008) (tracing etymology of "extortion" from Latin *torquere*); Pondelick v. Passaic Cnty., 168 A. 146, 147 (N.J. Sup. Ct. 1933) ("The verb 'abolish' imports absolute destruction. It has its root in the Latin word 'abolere,' meaning 'to utterly destroy.'"); De Casse v. Spader, 7 F. Cas. 321, 321 (C.C.D.N.J. 1866) (looking to etymology of "brick"); Stringfellow v. Sorrells, 18 S.W. 689, 689 (Tex. 1891) ("the increase of the lands"). Some courts have even interpreted phrases by breaking them down into, first, component words and then into component morphemes. *See, e.g.*, United States v. Murray, 621 F.2d 1163, 1168–69 (1st Cir. 1980) (interpreting "substantial transformation").

312. *See, e.g.*, City of Tchula v. Miss. Pub. Serv. Comm'n, 187 So. 3d 597, 600 (Miss. 2016) ("When one considers the Latin root of the word 'extension'—which is *extendere*, meaning 'to stretch out,'—the meaning of 'extension' becomes

dispositive but simply additional evidence supporting the court's conclusion.[313] Occasionally, courts will use the term "etymological" in the "dictionary" sense to identify the maximal logical scope of the word, before adopting a narrower interpretation.[314] Sometimes courts will use the term loosely to refer to any philological or lexicographical arguments.[315] Of course, some courts simply highlight etymologies for fun.[316]

Other courts have explicitly rejected arguments by etymology.[317] Litigants sometimes seem more willing to make arguments from etymology than judges,[318] which

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clear.") (footnote omitted); Burgess-Blanchard v. Sciacca, 819 So. 2d 352, 357 (La. App. 4th Cir. 2002), *as clarified on reh'g* (Apr. 30, 2002) ("The etymology of the word in question, common, is highly relevant and defines its meaning. The prefix com in Latin means with, and the root word muni in Latin means city or municipality in English. Therefore, it is clear the definition of the word common implies belonging or pertaining to the community at large or public.").

313. *See, e.g.*, United States v. TRW Rifle 7.62X51mm Caliber, One Model 14 Serial 593006, 447 F.3d 686, 691 & n.7 (9th Cir. 2006) (arguing that etymology of "restored" provides support for interpretation); Audette v. Isaksen Fishing Corp., 789 F.2d 956, 960–61 (1st Cir. 1986) (etymology of "poll" consistent with interpretation); Turner v. Kelly, 262 F.2d 207, 211 (4th Cir. 1958) (adopting interpretation "consonant with the etymological derivation of the term"); *see also* Block v. Ocean Acc. & Guarantee Co., 10 Teiss. 284, 285 (La. Ct. App. 1913) ("family" is therein used in its proper etymological as well as legal sense).

314. *See, e.g.*, Warbende v. Prudential Ins. Co. of Am., 97 F.2d 749, 752–53 (7th Cir. 1938) ("It is true that 'contusion,' etymologically considered, suggests an injury which is the result of the impact of a blow upon the exterior of the body. But for the purpose of our present inquiry the meaning cannot be so restricted."); Am. Sugar Refining Co. v. Delaware, L. & W.R. Co, 207 F. 733, 743 (3d Cir. 1913) ("It is true, the word 'rebate' has an etymological or dictionary meaning . . . .").

315. A & W Smelter & Refiners, Inc. v. Clinton, 146 F.3d 1107, 1109 (9th Cir. 1998) ("We must resolve various questions of statutory etymology on the way to deciding who must pay for this disposal.").

316. Snider v. Melindez, 199 F.3d 108, 112 n.1 (2d Cir. 1999) (etymology of "sua sponte"); Broward Gardens Tenants Ass'n v. U.S. EPA, 311 F.3d 1066, 1069 n.2 (11th Cir. 2002) (Lake Stupid); Burnap v. Somersworth Sch. Dist., 232 A.3d 390, 397 & n.5 (N.H. 2019) (regarding "cat's paw," the court explains "[t]he etymological roots of this theory's name lie in a fable in which a monkey tricks a cat into reaching its paw into a fire to retrieve roasting chestnuts.").

317. *See, e.g.*, Video Software Dealers Ass'n v. Schwarzenegger, 556 F.3d 950, 960 n.13 (9th Cir. 2009) (rejecting interpretation of "obscene" based on Latin root).

318. Hidalgo v. Garland, 861 F. App'x 263, 268 (10th Cir. 2021) (declining to engage with argument based on etymology of "accident"); Am. Tel. & Tel. Co. v. FCC, 503 F.2d 612, 615 (2d Cir. 1974) ("Each party and the intervenors have supplied etymological support for their positions."); Peterson v. Rossotti, No.

has unfortunately led to exasperation and, in extreme cases, sanctions.[319] Some judges are adamant that there is "no purpose in discussing" a word's etymology, because the only "question . . . is what the Legislature intended when it employed the word in the statute in question."[320] In this spirit, they have explicitly rejected interpreting words in their "strict etymological sense" in favor of following common usage.[321] Thus, one court interpreting a contract declined to presume that "the average merchantman and insurance agent who make these insurance contracts ever heard of the Greek word from which the term 'cyclone' is claimed to have been derived."[322] Some go even further and use "etymology" as

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2:01CV683, 2002 WL 507120, at *2 (E.D. Va. Jan. 9, 2002) (rejecting distinction drawn by plaintiff "citing the Latin roots of the two words"); Wilson v. State, 122 So. 617, 617 (Ala. Ct. App. 1929) (declining to adopt counsel's "microscopical examination of the etymology of the words"); State v. Goodrich, 113 N.W. 388, 390 (Wis. 1907) ("Counsel for the state urges that the etymological meaning of cigarette is 'small cigar' . . . ."); *cf.* Livingston's Lessee v. Moore, 32 U.S. 469, 484 (1833) ("Etymologically, contract means any agreement that draws two or more together."); *Ex parte* Garland, 71 U.S. 333, 348–49 (1866) (invoking Greek and Latin concepts). Litigants will also raise these arguments in the context of trademark litigation, sometimes hiring experts to testify on etymology. *See, e.g.*, Kelly-Brown v. Winfrey, 659 F. App'x 55, 60 (2d Cir. 2016); Jake Linford, *A Linguistic Justification for Protecting "Generic" Trademarks*, 17 YALE J.L. & TECH. 110, 153–55 (2015).

319. Chisesi v. Auto Club Fam. Ins. Co., 374 F. App'x 475, 477 (5th Cir. 2010) (imposing sanctions because "[w]ild accusations that a routine insurance dispute is motivated by nefarious corporate motives and extended, irrelevant discussion of etymology and Chaucer have no place in a brief to this court").

320. Shuchter v. Div. on C.R., 285 A.2d 42, 42–43 (N.J. Super. Ct. App. Div. 1971). The quotation in full is:

> We see no purpose in discussing the dictionary or other meanings of the word "creed," which undisputedly has its root in the Latin verb Credo, meaning "I believe." Meanings to be attributed to the word "creed" because of its origin and traditional breadth of usage are irrelevant to our inquiry. The question directly in point is what the Legislature intended when it employed the word in the statute in question.

Id.

321. United States v. Mark Cross Co., No. 1021, 1913 WL 19856, at *3 (Ct. Cust. App. May 26, 1913) (interpreting *set*); *cf.* Matter of Unified Control Sys., Inc., 586 F.2d 1036, 1037 (5th Cir. 1978) ("Like all other language in statutes, its meaning depends more upon its context than on its etymology.").

322. Maryland Cas. Co. v. Finch, 147 F. 388, 395–96 (8th Cir. 1906).

a pejorative.[323] But judges have nevertheless sometimes found it useful to consult a word's etymology when interpreting a statute or will, even for rare languages.[324] Prosecutors are also recorded as citing etymologies to explain concepts to juries.[325]

Perhaps even more state courts have looked to etymologies.[326] State courts also repeat the general

323. United States v. Bellomo, 263 F. Supp. 2d 561, 564–65 (E.D.N.Y. 2003) ("Every word of that statute [RICO]—'affairs,' 'participate,' 'conduct,' 'through,' 'pattern,' has been the subject of microscopic scrutiny, judicial and extrajudicial, which already fills volumes and will, confidently, fill still more. This exploration of the etymological derivation of each of those words and the semanticism surrounding them have given birth to a dizzying array of sophisticated rules qualified by subtle nuances and Talmudic distinctions which have provided grist for the searching minds of judges, lawyers and commentators all with a view towards divining an assumed intent in the mind of the legislative draftsman of the statute."); Racketeer Influenced and Corrupt Organizations (RICO), Pub. L. No. 91-452, tit. 9, 84 Stat. 922 (1970) (codified as amended at 18 U.S.C. §§ 1961 et seq.).

324. Kalihilihi v. Kaina, 5 Haw. 330, 332 (1885) (looking to etymology of Hawaiian word "hooilina" when interpreting will).

325. State v. Basham, 319 P.3d 1105, 1113 (Haw. 2014) (prosecutor cited Latin etymology of *facilitate* to jury).

326. State v. Abdus-Salam, 988 N.W.2d 493, 501 (Minn. Ct. App. 2023), *aff'd*, 1 N.W.3d 871 (Minn. 2024) ("armed"); Doe v. Superior Ct., 532 P.3d 1065, 1083 n.15 (Cal. 2023) ("prejudice"); Boozer v. Fischer, 674 S.W.3d 314, 322 (Tex. 2023) ("escrow"); Nonhuman Rights Project, Inc. v. Breheny, 197 N.E.3d 921, 968 (N.Y. 2022), (Rivera, J., dissenting) ("habeas corpus"); Bragdon v. Bayshore Prop. Owners Assn., Inc., 251 A.3d 661, 684 (Del. Ch. 2021) ("in an appropriate case"); People v. Wood, 954 N.W.2d 494, 502 (Mich. 2020) ("juror"); Preston Hollow Capital LLC v. Nuveen LLC, No. 2019-0169-SG, 2020 WL 1814756, at *3 (Del. Ch. Apr. 9, 2020) (finding etymology of bond trader saying "in the box" to be uncertain); *In re* CSRBA Case No. 49576 Subcase No. 91-7755, 448 P.3d 322, 353 n.17 (Idaho 2019) ("adfluvial"); People v. Aleynikov, 104 N.E.3d 687, 696 (N.Y. 2018) ("tangible"); State v. DeJesus, 395 P.3d 111, 128 & n.74 (Utah 2017) (Lee, J., concurring in part and concurring in the judgment) ("spoliation"); Wis. Carry, Inc. v. City of Madison, 892 N.W.2d 233, 240 (Wis. 2017) ("commission"); State v. Beaudion, 352 P.3d 39, 43 (Nev. 2015) ("hearing"); State v. Rasabout, 356 P.3d 1258, 1263–64 (Utah 2015) ("discharge"); People v. Zapien, 846 P.2d 704, 718 (Cal. 1993) ("prejudging"); People v. Nesbitt, 199 N.Y.S.3d 850, 854 (N.Y. City Ct. 2023) ("due diligence"); Nouri v. Dadgar, 226 A.3d 797, 819 (Md. Ct. Spec. App. 2020) ("dower"); Fredricks v. McMillan, 358 So. 3d 701, 705–06 (Ala. Civ. App. 2020) ("highway"); State v. Brown, No. E2019-01462-CCA-R3-CD, 2020 WL 6041807, at *1 n.1 (Tenn. Crim. App. Oct. 13, 2020) ("expungement"); State v. Kiser, No. E2018-00696-CCA-R3-CD, 2019 WL 2402962, at *7 (Tenn. Crim. App. June 6, 2019) ("verify"); Att'y Grievance Comm'n of Md. v. Chanthunya, 133 A.3d 1034, 1043 (Md. App. Ct. 2016) ("speculate"); Schneller v. Gavin, No. 606 C.D. 2015, 2016 WL 2346966, at *3

principle that the ordinary meaning controls over technical or etymological meanings.[327] Thus, in several circumstances state courts have rejected etymological definitions,[328] such as where a prior statute had defined the term.[329] One court has used the term "etymology" broadly to describe the activity of tracing a term through prior legal authorities (rather than in the narrow sense of looking up the word's roots in a dictionary).[330] Another court also explained that where the term at issue has a host of other meanings, "etymology and dictionary definitions [are] less helpful than other indicia of statutory meaning."[331] An argument in an old case even suggested that a word's etymological meaning is to be preferred, absent evidence to the contrary.[332]

(Pa. Commw. Ct. May 4, 2016) ("mandamus"); Mitchell v. Md. Motor Vehicle Admin., 148 A.3d 319, 340 (Md. App. Ct. 2016) ("profanity"); *In re* Geiger, No. A-1409-13T2, 2015 WL 7261458, at *10 & n.14 (N.J. Super. Ct. App. Div. Nov. 18, 2015) ("negro"); State v. Nicholson, No. A14-2121, 2015 WL 7356588, at *2 (Minn. Ct. App. Nov. 23, 2015) ("take").

327. *See, e.g.*, People v. Mankel, 129 N.W.2d 894, 896 (Mich. 1964) ("Legislators are not required to be lexicographers. Statutes are not to be judicially examined as exercises in etymological or philological refinements."); Williams v. Fain & Stamps, 58 S.E. 307, 308 (Ga. Ct. App. 1907) ("in the interpretation of statutes we look to the ordinary, not the etymological, signification of words"); Pence v. Commonwealth, 1884 WL 6901, at *2 (Ky. Super. July 18, 1884) ("It is, however, a very hazardous rule to interpret legislative language by reference to the obscure etymology of words. In its active life business loses sight of philological proprieties.").

328. Commonwealth v. Beatty, 1910 WL 3107, at *1 (Pa. Com. Pl. 1910) (adopting ordinary meaning of "theatre" rather than etymology); Davis v. Pac. Tel. & Tel. Co., 59 P. 698, 699 (Cal. 1899) ("The words therefore cannot be limited to their etymological meaning, and consideration must be had to their present sense and acceptation.").

329. State v. Angus, 75 A. 623, 624 (Conn. 1910) (declining to adopt etymological interpretation of "adjoining"); *Ex parte* Wisner, 92 P. 958, 961 (Mont. 1907) (phrase "individual banker" used in statute of New York and "been interpreted by the courts of that state" and thus "had acquired a fixed and definite meaning in the law other than its etymological definition prior to that time").

330. Bragdon v. Bayshore Prop. Owners Ass'n, Inc., 251 A.3d 661, 684 (Del. Ch. 2021).

331. State v. Beaudion, 352 P.3d 39, 43 (Nev. 2015).

332. Drake v. Hudson, 7 H. & J. 399, 405 (1826) ("The surest guide is etymology, where the import of words hath not been abused or perverted by modern convenience . . . ."); *id.* at 406 ("Consult the analogy and etymology of

One particularly thoughtful application of this tool of statutory interpretation is in an opinion by Connecticut Supreme Court Justice Ecker.[333] The case turned on whether a state law requiring owners of certain properties to "submit" information by a date certain "is satisfied when that information is postmarked but not delivered by that date."[334] The court held that this language "unambiguously requires" that the information be received by the date specified.[335] Justice Ecker concurred in the judgment but wrote separately to explain his methodology.[336] He explained:

> I also consider it significant that the word "submit" comes from the Latin term, "mittere," to send. See Webster's Third New International Dictionary (2002) p. 2277 ("submit" derives from "[Middle English] submitten, [from Latin] submittere to let down, lower, set under, [from] sub- + mittere to send, throw"). The meaning of words can evolve over time, and there is no rule of construction requiring that the contemporary meaning of a word must remain true to its etymological origin. But it seems particularly compelling in our search for ambiguity that the precise meaning of the word advanced by the plaintiff is not only used to define that word in a modern dictionary, but also is the literal meaning of the word's original Latin root. Reference to the original Latin, Greek, or other root of a word can be a helpful clue to its meaning in the law. See, e.g., Chamberlain v. Hemingway, 63 Conn. 1, 5–6, 27 A. 239 (1893) (considering Latin root of word "river" to help determine meaning of term "watercourse").[337]

Justice Ecker therefore found the text "ambiguous" but nonetheless agreed with the majority on policy grounds.[338]

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the language, and if neither perspicuity nor analogy support it, . . . the meaning, most conformable to ancient usage, must be taken and preferred.").

333. Seramonte Assocs., LLC v. Town of Hamden, 282 A.3d 1253 (Conn. 2022).

334. *Id.* at 1254.

335. *Id.* at 1262.

336. *Id.* at 1262 (Ecker, J., concurring).

337. *Id.* at 1265.

338. *Id.* at 1265–68, 1275–76.

In all, thousands of opinions have cited etymologies in one form or another. Favorable citations most often appear in a context where the word at issue is not defined by statute or binding precedent. Courts will frequently note the etymology provided by a standard dictionary.[339] This most often appears at the beginning of the analysis and is rarely dispositive. But it frequently provides additional context or cumulative evidence supporting one interpretation.[340]

III. ANALYSIS

There is thus a long tradition of linguists using etymology to understand the meaning of words and jurists applying this tool to ascertain the significance of legal texts. This Part analyzes the logic underlying arguments from etymology. It proposes four models for how etymology can inform legal arguments: (A) etymology can provide evidence of a word's prior meaning and thus, absent better information, a word's current meaning; (B) etymology can produce evidence of a word's broader meaning, including its root, animating metaphor, or equivalent in other languages or legal systems; (C) speakers may explicitly intend to evoke a word's etymological connotations to define it; finally, (D) etymology can sometimes produce a mnemonic useful for pedagogical purposes.

So how does a word's etymology help explain its legal significance? In the ancient world, stoics and platonists could maintain that objects had a "natural" name. Even for words named by convention, identifying its etymology would help the reader capture its "essence" or "essential meaning." This instinct likely has deep roots. Compare

339. State *ex rel.* Fatzer v. Minneola Hosp. Dist., 277 P.2d 607, 612 (Kan. 1954) (noting that standard dictionaries show etymology of *enumerate* as Latin *enumero*). Meanwhile, U.S. Supreme Court cases frequently cite NATHAN BAILEY, AN UNIVERSAL ETYMOLOGICAL ENGLISH DICTIONARY (1770).

340. Finally, it is worth acknowledging that modern courts in foreign jurisdictions have also relied on etymological arguments. For an interesting example, see Mandla v. Dowell Lee [1983] 2 AC 548, 562–63 (HL).

this to the Brothers Grimm fairytale Rumpelstiltskin, in which Rumpelstiltskin offers to relinquish his claim to the queen's first-born if she can guess his name within three days.[341] Puccini's opera *Turandot* revolves around a similar plot device, where a visitor to the Chinese court offers to accept death if the princess is able to guess his name before dawn.[342] In this view, etymology can reveal the "true" meaning by explicating a word's constituent parts.

The more recent version of this position may be called linguistic purism. According to this view, the original meaning of words, based on their etymologies, are purer or more correct. By referencing etymologies, this inquiry is objective. This attitude is consistent with prescriptive grammar movements and efforts to promote the purity of languages. One institution that exemplifies this attitude is the Académie Française, which regulates the official version of the French language in an effort to preserve it from foreign influences and neologisms. Another is the Vatican's Office of Latin Letters, which produces official Latin versions of the Catholic Church's documents, thereby regulating the proper formation of Latin terms to describe modern phenomena. Some countries even maintain a separate form of the language for official purposes, such as the modern Greeks who employed καθαρεύουσα ("purifying") dialect for official and literary purposes and δημοτική ("democratic") for vernacular purposes, until 1976.[343] These movements sometimes aspire to a "pure," "noble," or "sacred" version of the language that is "objectively correct."

Today, most linguists adopt the conventionalist view that words have essentially arbitrary sounds. These, in turn, change over time and vary geographically. Nevertheless, it is possible to trace the changes in these

341. JACOB GRIMM & WILHELM GRIMM, *Rumpelstiltskin*, *in* GRIMM'S FAIRY TALES 111 (Edgar Taylor & Marian Edwardes trans., Project Gutenberg 2001).

342. GIACOMO PUCCINI, Turnadot Act II (1926).

343. *A 100/1976*, Φύλλο Εφημερίδος της Κυβερνήσεως [Official Gazette of Greece] (Apr. 30, 1976), https://search.et.gr/el/fek/?fekId=687982 [https://perma.cc/UP2D-WD24].

meanings using etymology. Linguists have classified several recurring changes in meaning or "semantic shifts." These include narrowing, where a word takes on a more specialized meaning: For example *meat*, originally referred to food in general but is now limited to animal flesh.[344] Broadening refers to when a word takes on a more generalized meaning: *Holiday* originally referred to holy days but now refers to any day of celebration.[345] Amelioration describes when a word takes on a more positive connotation: *Knight* originally referred to a servant but now indicates a nobleman.[346] Pejoration is the opposite and describes when a word takes on a more negative connotation: A *villain* was simply a farm laborer or someone living on a country estate (cognate with *village* and *villein*); today, it means wicked person or criminal.[347] Other phenomena include semantic bleaching, where a word loses its specific meaning and becomes more general or less intense: *awesome* once meant inspiring awe but now merely means very good.[348] By metonymy, a word can acquire a new meaning through its association with something else: *White House* can stand for the President or Executive Branch, not merely for a residential building at 1600 Pennsylvania Ave. Words can also become metaphors to stand for something else: *Head* was originally a body part but now can refer to a leader or top

344. *Meat, n.*, OXFORD ENGLISH DICTIONARY (2026), https://www.oed.com/dictionary/meat_n?tab=meaning_and_use#37488214 [https://perma.cc/S9GX-YB6F].

345. *Holiday, n.*, OXFORD ENGLISH DICTIONARY (2025), https://www.oed.com/dictionary/holiday_n?tab=meaning_and_use#1456172 [https://perma.cc/N563-WLQ9].

346. FRANCIS KATAMBA, ENGLISH WORDS 122 (1994); *see Knight, n.*, OXFORD ENGLISH DICTIONARY (2026), https://www.oed.com/dictionary/knight_n?tab=meaning_and_use#39995346 [https://perma.cc/ECP3-3WS9].

347. *Villain, n.*, OXFORD ENGLISH DICTIONARY (2025), https://www.oed.com/dictionary/villain_n?tab=meaning_and_use#15584997 [https://perma.cc/W6AP-KGHS]; KATAMBA, *supra* note 346.

348. *Cf.* ANTONIN SCALIA & BRIAN GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 78 (2012) (describing the famous example of Queen Anne describing St. Paul's Cathedral as "awful, artificial, and amusing," meaning "awe-inspiring, highly artistic, and thought-provoking").

part of something. It is cognate with the word *chapter*, which is the heading of a section of a literary work. A word may metamorphose in any of these ways. With this in mind, consider the following four models for how a word's etymology can inform its legal significance.

A. Prior Meaning

Philosophically, arguments from etymology take the following form. There is a question what a word W as used at time t_1 means. The word W_1 derives from some predecessor word(s) V (or V_1, …, V_i) with a known meaning at time t_0. We can therefore hypothesize that the meaning of word W at t_1 could be the meaning of word V at t_0 (or the compound idea V_1+…, V_i), unless additional information suggests otherwise.

This builds on two assumptions. First, the etymology of the word W can be ascertained with a reasonable probability. To the extent that the etymology is uncertain, the hypothesis should be discounted proportionately. Second, it assumes continuity between the words the meaning of V at t_0 and W at t_1.[349] This is not proof of its current meaning, but it is one conjecture. Yet the probable linguistic continuity between V and W provides a causal mechanism for a claim that V and W are semantically similar or the same. Absent further data, this may be the most probable hypothesis for the word's meaning at t_1. But where additional evidence suggests otherwise, this may rebut the conjecture.

349. *Cf.* Katherine A. Cohen, Note, *Measuring Semantic Relatedness: A Proposal for a New Textual Tool*, 74 VAND. L. REV. 483, 499 (2021) ("judges who use etymology presume that although the sounds and spelling of a word have changed over time, the word retains at least a connotation of its historical meaning").

In practice, arguments from etymology therefore have the greatest utility when (a) the derivation can be traced with a high degree of probability and (b) there is comparatively little additional information about the word's meaning after time t_0. This paradigm can be applied to at least three common fact patterns.

1. Old words

First, consider obscure or poorly attested words. As noted above, scholars of Homer working in Alexandria struggled to understand the meaning or confirm the spelling of rare words that appeared only once in literature. They could not rely on a dictionary to define the word; the word's surrounding context might provide only limited clues. In these cases, the word's ostensible etymology might be more probative of its meaning than any other option. The same logic applies to legal inquiries into obscure words. If a legal document contains an obscure word whose meaning is not made clear by its context, contemporaneous documents, or a dictionary, the word's etymology may be the most reliable clue to its meaning.

2. Common words

For most words, the etymology may provide at least one logically possible meaning. If the word originally meant *V* at t_0, it is possible (but not necessary) that *W* at t_1 has the same or similar meaning. Courts can apply this logic on a case-by-case or categorical basis. For example, a court could canvass the universe of possible meanings a legal term may have in a particular context and then select from this the most plausible. Thus, many cases (e.g., *McBoyle*) consider a word's "etymological" meaning as one potential option, even if the court ultimately rejects this in favor of an alternative meaning (e.g.,

vehicle ≠ airplane).[350] Alternatively, a court could consult the etymology of a legal term but determine on a categorical basis that the word no longer had this meaning by time t_1. This could involve consulting historical dictionaries, contemporaneous documents, or other philological evidence indicating that a word's etymology does not correspond to its present meaning. Thus, it is safe to say that modern laws regulating "meat" all refer to animal flesh, even if the word once referred to food generally.

Importantly, evidence is required to confirm or rebut the claim that a word's etymological meaning coincides with the word's present legal significance. It is illogical to argue that a word's "etymological meaning" necessarily is or necessarily is not its current meaning, without more. Every etymology is at least a hypothesis, waiting to be proven or disproven. Where a word's significance is well known, it may be more costly to look up the word's history. In other cases, it may be difficult, costly, or impossible to look up a word in a dictionary; in some cases, etymology can provide a less costly, faster, and more reliable conjecture for a word's meaning.

3. New words

Etymology is especially salient when interpreting new words. Speakers often form new words by recombining known morphemes or lexical units. Listeners can often understand the meaning of unfamiliar words formed from familiar components. If a lawyer referred to prose as *Gorsuchian* or *Sotomayorian*, you could hazard a guess, even if you had never seen these letters appear in this precise sequence. The same holds for rare words like *ungrammaticality*[351] and

350. *Cf.* Maxine D. Goodman, *Reconstructing the Plain Language Rule of Statutory Construction: How and Why*, 65 MONT. L. REV. 229, 240 (2004) (identifying "the etymological meaning" as one of 10 options).

351. *Ungrammaticality, n.*, OXFORD ENGLISH DICTIONARY (1986), https://doi.org/10.1093/OED/1103639165 [https://perma.cc/BSU7-YZZ4].

undefined words like *hippophilia*.[352] You can break these down into identifiable units and recombine them: thus, *hippophilia* is the love (φιλία) of horses (ἵππος). In all these cases, the etymology is apparent and highly probable; the constituent morphemes are well known; it is reasonable to infer the word's meaning from these roots, absent further information. Indeed, the cost of looking up these words in a dictionary probably outweighs the marginal benefit of confirming your hypothesis. The fact that you did not pause to look up *ungrammaticality* in a dictionary proves the point.

Many legal terms derive from Latin. Familiarity with common terminations can help a lawyer understand these unusual words. Thus, elementary etymology will allow a first-year student to recognize that the *appellant* is the party "appealing" (from present active participle of *appellare*). More generally, these examples illustrate that it can be more efficient to memorize the significance of a finite set of morphemes that can generate an astonishing number of combinatorial possibilities.

B. Radical Meaning

Dictionaries are limited in the amount of space they can allocate to each word. Most entries will therefore be underinclusive. Dictionaries may fail to define every possible application of the word. They also may not convey the word's context, metaphorical meaning, or entire tradition. In these cases, a word's etymology can help elicit its broader meaning beyond its mere dictionary definition.[353]

1. Root meaning

Each word has a broad association of meanings. Legal authorities sometimes distinguish between a word's root or core meanings and the penumbras or

352. This word has not been defined by the *Oxford English Dictionary*.

353. *Cf.* Cohen, *supra* note 349 ("etymology . . . can help elucidate semantic nuances of words that are not evident from their current dictionary definitions").

emanations of the word. Etymology can help identify the root meaning and distinguish this from more tenuously related concepts. Thus, Isidore explained that a river is defined by the fact that it flows (*flumen*).[354] Hugo Grotius was able to distill the concept of *war* into its etymological root of *duels* with every other man.[355] In *The Britannia*, the Court emphasized that the core idea of *course* was motion (from Latin *currere* to run).[356] As Lieber noted, this can be especially useful in distinguishing between synonyms that may have similar meanings but different core or root meanings.[357]

2. Metaphorical meaning

Etymology can also explain the meaning of a word by producing the animating metaphor.[358] The law frequently distinguishes between the letter and the spirit of the law. Analogously, a dictionary can provide a word's definition, but an etymology explains the metaphor behind the idea. Thus, Alcuin defined etymology as "*origo et ratio vocabulorum*" (the origin and reason of words).[359] For example, the word *patent* derives from the Latin *patere* to lie open (cognate with *apparent*);[360] this suggests that the purpose of a patent is to reward a scientist with a limited monopoly of the use of his invention, in exchange for revealing or laying open his discovery.

3. Mapping meaning

Etymology is especially useful in explaining concepts that have a rich history. Consider the case when *W* is either narrowly defined or unclear, but *V* is well-

354. *See* ISIDORE OF SEVILLE, *supra* notes 97–98 and accompanying text.

355. *See* GROTIUS, THE RIGHTS OF WAR AND PEACE, *supra* note 195.

356. *See* 153 U.S. 130, 141–42 (1894).

357. *See supra* note 249 and accompanying text.

358. *Cf.* Cohen, *supra* note 349 ("In its more frequent legal use, . . . courts employ etymology to elucidate the meaning of a term.").

359. Alcuin, *De Grammatica*, 854, 858C (1851).

360. *Patent*, OXFORD ENGLISH DICTIONARY (2d ed. 1989).

understood. In these cases, highlighting the etymological connection between *W* and *V* may provide substantial additional information. In law, this is frequently the case when tracing legal concepts through statutes or across legal systems. Examples include Coke and other jurists explaining obscure legal terms by reference to their better-known French or Latin predecessors.[361] This is also analogous to Doddridge's concept of "antilexis," where a lawyer may explain a word *W* by reference to another concept *V* about which we know much more.[362]

Thus, in *Patapsco*, the Court tried to derive the term *barratry* from Roman languages and map these terms onto concepts from Roman law (*dolus*, *culpa*, *fraus*).[363] Similarly, when courts interpret the Seventh Amendment's concept of law, they are not limited to dictionary definitions but commonly adjudicate whether matters are legal or equitable based on how courts in England handled the matters in courts of law and courts of equity.

Indeed, this use of etymology has special applicability in the context of law. American courts follow the canon of construction: When a statutory term is transplanted from another legal source, it brings the old soil with it.[364] In the same way, when a word or concept is borrowed from another context, it may be useful to look back to its original context and associations.

In this case, the etymology is strictly superior to a mere dictionary definition. A dictionary may summarize a word's literal meaning; but it cannot possibly import all the concepts and nuances associated with a long legal tradition. Etymology can.

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361. *See supra* notes 132–82.

362. *See supra* note 130 and accompanying text.

363. *See* Patapsco Ins. Co. v. Coulter, 28 U.S. 222, 230 (1830).

364. *See, e.g.*, Taggart v. Lorenzen, 587 U.S. 554, 560 (2019); Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 537 (1947).

C. Intended meaning

Etymology is necessarily relevant if a speaker subjectively intends to evoke it. In some cases, a speaker may explicitly state his intent to refer the word's etymology.[365] In other cases, context may suggest intent. The law encompasses both questions of fact and questions of law. When resolving factual disputes, there will sometimes be a question whether a relevant actor had a prerequisite intent. This is a subjective inquiry. On legal questions, the cardinal rule of statutory interpretation is to ascertain legislative intent. If the legislature intended to use a term in its etymological sense, that should control its interpretation.

Often, the law appears in a formal context. Etymology can be useful in deriving a word's proper or formal meaning, as intended by the legislature. Even if we reject the notion that words have a "true" or "essential" meaning, many cultures have a formal dialect marked by proper diction. Thus, in English authors will respect the difference between "who" and "whom" in formal publications, even if they use "who" in informal settings. To the extent that the law is concerned with formal documents written in the formal dialect, etymology can help elicit and clarify a word's proper meaning. For example, *unique* etymologically suggests

365. *See, e.g.*, People v. Zapien, 846 P.2d 704, 718 (Cal. 1993) ("Rather, the statute uses the word in its etymological sense of 'prejudging' a person or cause on the basis of extraneous factors."); CHARLES LUND BLACK JR., A NEW BIRTH OF FREEDOM 55 (1997) ("In the exact etymological sense, the Court *annihilated* the privileges and immunities of national citizens, insofar as these were to be seen as ordained by the Fourteenth Amendment."); Michael W. McConnell, *The Fourteenth Amendment: A Second American Revolution or the Logical Culmination of the Tradition?*, 25 LOY. L.A. L. REV. 1159, 1175 (1992) ("The Fourteenth Amendment, under this account, was 'revolutionary' only in the etymological sense of the word: it was a 'turning back' to the original principles of the Founding, which had been corrupted and obscured by the power of the slaveocracy."); Henry J. Friendly, *Reactions of A Lawyer-Newly Become Judge*, 71 YALE L.J. 218, 218 (1961) ("What strikes a practicing lawyer on becoming a judge of an important appellate court? . . . This power of deciding between one's fellow men is, indeed, a responsibility that is awful in the etymological sense and must call forth a deep sense of humility.").

that it is "one of a kind," even if some use the term to mean "rare."

Many words in the law are used in their formal or etymological sense.[366] Thus, absent further information, it would be reasonable to interpret the word "disinterested" appearing in a legal document as meaning "unbiased" (its older and etymological meaning) rather than "uninterested" (sometimes appearing in common usage).

D. Mnemonic Meaning

Finally, it is possible that some etymologies in law primarily serve a mnemonic purpose. Many of the examples from the pre-modern era do not stand up to scholarly scrutiny. Nevertheless, they may be justified on pedagogical grounds to the extent they help students remember the controlling legal principles. Perhaps the Roman law example *mutuum* or the common law *aggregatio mentium* can be justified on this basis.[367]

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These are some mechanisms of how etymology can inform legal interpretation. Courts should always begin any analysis of a word's meaning with its etymology. This approach recalls the word's history, helps identify the full range of its potential meanings, and locates the word within a network of related terms. This may not be probative in every case. Moreover, a word's etymology should never be dispositive. As Max Radin has argued, "We can often begin with origins—i.e. etymology—but we can almost never stop there."[368]

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366. *Cf.* MATTHEW A. PAULEY, I DO SOLEMNLY SWEAR: THE PRESIDENT'S CONSTITUTIONAL OATH 184 (1999) (arguing that the President's oath in the Constitution is "*consular* in the etymological sense" of consulere "to take care of some person or thing").

367. *See supra* notes 72–73, 185–86 and accompanying text.

368. Max Radin, *Legal Philology: Resign; Retire; Emolument*, 23 A.B.A. J. 771, 771 (1937). I disagree, however, with the apocryphal statement often attributed

IV. DISCUSSION

This Part discusses the implications of this analysis. First, it argues that (A) as a descriptive matter, etymological analysis is part of our law. Second, it argues that (B) as a normative matter, courts should look a word's etymology when its meaning is in doubt. Finally, it (C) addresses objections.

A. Descriptive Argument

As a descriptive matter, is etymology part of our law?[369] Yes. There is a long, continuous tradition of using etymology to understand the legal significance of words, from Ancient Greece to Roman law, through medieval texts, and including early English jurists. These authors, in particular, consciously articulated how a word's etymology could be used in legal argumentation. At the time the Constitution was ratified, James Wilson explained the utility of etymology in his lectures on the Constitution. Jurists from Chief Justice Marshall and Joseph Story through Justices Scalia, Breyer, and Thomas have all employed etymology as a tool of statutory interpretation. Litigants frequently cite words' etymologies, and many cases have accepted these arguments. Outside of court, professors and jurists have looked to etymology in their scholarly writings.[370] There

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to Voltaire that etymology is a science in which vowels count for nothing and consonants for very little. *In re* Fossat, 69 U.S. 649, 700 (1864).

369. *Cf.* William Baude, *Is Originalism Our Law?*, 115 COLUM. L. REV. 2349, 2351 (2015).

370. Jason Boatright, *The History, Meaning, and Use of the Words Justice and Judge*, 49 ST. MARY'S L.J. 727, 730–41 (2018) (etymology of "justice" and "judge"); Frank O. Bowman, III, *Presidential Pardons and the Problem of Impunity*, 23 N.Y.U. J. LEGIS. & PUB. POL'Y 425, 453–54 (2021) ("pardon"); Steven G. Calabresi & Andrea Matthews, *Originalism and* Loving v. Virginia, 2012 B.Y.U. L. REV. 1393, 1417, 1424 (2012) ("privilege," "immunity," "abridge," "same"); Christopher M. Fairman, *Fuck*, 28 CARDOZO L. REV. 1711, 1716–19 (2007) (title word); Bryan A. Garner, *Indemnify A. and Hold Harmless; Save Harmless*, 15 GREEN BAG 2D 17, 18 (2011) ("indemnify"); C. Quince Hopkins, *Rank Matters but Should Marriage?: Adultery, Fraternization, and Honor in the Military*, 9 UCLA WOMEN'S L.J. 177, 215 (1999) ("honor"); Shayana Kadidal,

are even explicit statements by professors explaining that etymology is part of our law.[371]

At the same time, courts do not cite etymologies nearly as often as they quote dictionary definitions or rely on other tools of statutory interpretation. Nor do courts provide explicit normative theories explaining how etymological arguments inform their arguments. Even though there is a strong tradition of using etymology in legal interpretation, this appears to be an underutilized and undertheorized form of argumentation.

B. Normative Argument

Surprisingly, there is hardly any literature articulating a normative argument for relying on etymology in legal interpretation.[372] This section considers five benefits: information, objectivity, stability, judicial competence, and focality.

First, using etymology in legal interpretation has epistemic benefits. A word's etymology provides, at a minimum, its root and language of origin. It also

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Obscenity in the Age of Mechanical Reproduction, 44 AM. J. COMP. L. 353, 378 (1996) ("obscene"); Bruce A. Khula, *Antitrust at the Water's Edge: National Security and Antitrust Enforcement*, 78 NOTRE DAME L. REV. 629, 633 (2003) ("antitrust"); Alex Kozinski & Eugene Volokh, *Lawsuit, Shmawsuit*, 103 YALE L.J. 463, 463–64, 466–67 (1993) ("chutzpah"); Santiago Legarre, *The Historical Background of the Police Power*, 9 U. PA. J. CONST. L. 745, 748–49 (2007) ("police"); Jed Handelsman Shugerman, *Vesting*, 74 STAN. L. REV. 1479, 1482–83 (2022) ("vest"); Alice Ristroph, *Farewell to the Felonry*, 53 HARV. C.R–C.L. L. REV. 563, 570–77 (2018) ("felony"); Chris William Sanchirico, *Evidence, Procedure, and the Upside of Cognitive Error*, 57 STAN. L. REV. 291, 301–02 (2004) ("testify"); J.-R. Trahan, *Time for A Change: A Call to Reform Louisiana's Intertemporal Conflicts Law* (law of retroactivity of laws), 59 LA. L. REV. 661, 733–34 (1999) ("retroactivity").

371. *See, e.g.*, Zoldan, *supra* note 283, at 13–14 ("In recent years, the Supreme Court, lower federal courts, and state courts have all relied on etymology-based interpretation. . . ."); *id.* at 13 (referring to "the longstanding practice of interpreting legal terms according to their etymological roots"); John Vlahoplus, *Evaluating Originalism: Commerce and Emoluments*, 93 ST. JOHN'S L. REV. 683, 686 (2019) ("Originalists use a variety of techniques to tie constitutional interpretation to the past, including . . . etymologies . . . .").

372. *Cf.* Cohen, *supra* note 349, at 498 ("Explicit justifications for the Court's use of etymology are sparse.").

frequently produces its historical meaning and the original metaphor behind the word's creation. It may also call up cultural, traditional, or institutional associations. All of these provide additional context for the word's meaning. It therefore provides additional information directly relevant to interpretation.

The weak version of this argument is that this additional information is non-negative. This additional information should be used if the benefits outweigh the costs of research. Assuming that judges can reliably derive the origins of words (which is plausible given the precision of modern dictionaries), the benefits of this additional context will frequently outweigh the cost of quickly consulting an etymological dictionary. The strong version of this argument is that consulting a word's etymology will produce more substantively correct decisions. This claim is harder to evaluate, since the correctness of a legal opinion is often open to dispute.

Second, etymology is objective. This requires only the text of the law and access to an etymological dictionary. Arguments from etymology do not require knowing the subjective intent of lawmakers. This tool of statutory interpretation therefore promotes objective interpretation of the law.

Third, looking to etymology to understand a term's significance can promote stability in the law. It is true that words change meaning over time, and it is precisely this malleability that makes etymology useful: Understanding the origins and mutations of a word over time can help courts understand the word's meaning at a particular point in time. Yet adopting canons of construction that validate the use of etymology can in turn promote stability by limiting the variability in how words evolve, at least in legal discourse.

Fourth, etymology is within the grasp of judicial competence. Today, every lawyer can easily access authoritative etymologies available in scholarly dictionaries. Moreover, judges are especially expert in understanding the meaning of words—even if they are not professional linguists. Accessing and reasoning from

etymologies is well within the competence of judges. This stands in contrast to corpus linguistics, which requires technical knowledge of how to access and analyze large corpora.

Finally, using etymology as a tool of interpretation can serve as a focal point. Economists describe focal points as solutions to coordination games where individuals cannot communicate.[373] Thus, in another context, Cass Sunstein has argued that one benefit of originalism is that it serves as "a reasonable focal point," which has "low decision costs, at least compared to imaginable alternatives, and it also has low error costs, again compared to alternatives."[374] In other words, litigants and judges may theoretically rely on an infinite range of arguments to support their positions, but there is a practical benefit to coordinating their dispute around the same basic facts. By looking to the original understanding of a legal text, lawyers and judges can coordinate their agreement or disagreement around a common set of facts. To the extent these arguments are grounded in history, the facts are objective and ideally easy to research. This is a pragmatic argument in favor of originalism.

The same argument applies to etymology, but even more so. When parties dispute the meaning or application of a term, the word's etymology can serve as a reasonable focal point. Modern dictionaries routinely provide authoritative etymologies. This can form the common basis for the parties to articulate their respective positions. This distinguishes etymology from originalism, which may require lawyers to conduct extensive original research into a wide range of sources spanning decades.

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373. *See, e.g.*, THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT 57, 60 (Harvard University Press 1960).

374. Cass R. Sunstein, *Originalism*, 93 NOTRE DAME L. REV. 1671, 1672 (2018).

C. Objections

There are also arguments against the use of etymology. These have limited force in particular cases. But it is overbroad to suggest that etymology can never be useful or legitimate in legal interpretation. Consider the following legal, linguistic, logical, and logistical objections to using etymology in legal interpretation.

The first objection is that a word's etymology may be legally irrelevant. Courts have cautioned that "[t]he law uses words in their accepted sense, rather than according to their strict etymology, or to the niceties of philology."[375] Jurists such as Grotius,[376] Vattel,[377] and Story have made similar points.[378] This has led scholars such as Thomas Lee and Stephen Mouritsen to argue that citing the etymology of a statutory term is not "defensible."[379]

As a threshold matter, common usage is not always the controlling legal standard: for example, terms of art are to be understood in their technical sense. But even where common usage is the standard, these objections simply beg the question: What does the word at issue mean in common usage? Alternative tools of statutory interpretation, such as dictionaries and corpus

375. Rhodes v. Matthews, 67 Ind. 131, 140 (1879).

376. GROTIUS, THE RIGHTS OF WAR AND PEACE, *supra* note 195, at 2.16.29 ("From what has been said an inference may be drawn in favour of sworn treaties or agreements that they ought to be taken in the most usual acception of the words, rejecting all implied limitations and exceptions, and such as are not immediately necessary to the subject.")

377. VATTEL, THE LAW OF NATIONS, *supra* note 197, at 2.17.271 ("The proper signification of words is the signification which common usage has affixed to them" and warning that "[t]he use of the vulgar languages being, as every one knows, very arbitrary, researches into etymological and grammatical meaning of terms, in order to discover the true sense, according to common custom, would form only a vain theory, equally useless and destitute of proof.").

378. JOSEPH STORY, COMMENTARIES ON THE UNITED STATES CONSTITUTION, § 210 (Hilliard, Gray, & Co. 1833) ("[E]very word employed in the constitution is to be expounded in its plain, obvious and common sense [meaning] . . . the people must be supposed to read them, with the help of common sense; and cannot be presumed to admit in them any recondite meaning, or any extraordinary gloss.").

379. Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 YALE L.J. 788, 807 (2018).

linguistics, may suggest answers. But where the question of legal interpretation is sufficiently complex to resort to dictionaries, recourse may also be had to other tools, such as etymology. In some cases, dictionaries will indeed produce more probative evidence of a word's meaning in common usage. But in some cases, they will not—for example, when a word is very old or very new. Moreover, even where dictionaries define a word or corpus linguistics can document its use, these definitions may not speak to the particular question at issue: whether the given word can be used to cover the conduct at issue in the case. It is therefore wrong to make categorical claims that the use of etymology is never defensible.

Second, some argue that, on purely linguistic grounds, the etymology of a word is irrelevant to its current meaning. As Henry Sweet argued:

> The meaning of a word in a given period of a given language is a matter of usage, and the fact of its having had a certain meaning at some earlier period or in some cognate language does not necessarily afford any help in determining, and still less in remembering, its present meaning.[380]

Perhaps the most articulate form of the argument was by Sextus Empiricus, described above: If the etymology is consistent with current meaning, the etymology is redundant; if the etymology is inconsistent with current meaning, it is wrong and should not be adopted.[381] Thus, Lee and Mouritsen give the examples of *December* meaning "tenth month" and *anthology* meaning "bouquet of flowers."[382] In both cases, knowing the etymology does not help one understand their current meanings—and indeed, relying on the etymology of *December* could result in missed appointments. They

380. HENRY SWEET, THE PRACTICAL STUDY OF LANGUAGE 88 (Henry Holt & Co. 1900).

381. *See* EMPIRICUS, *supra* note 61.

382. Lee & Mouritsen, *supra* note 5, at 809–10.

therefore argue that the analysis of etymology "tells us nothing about its ordinary meaning."[383]

Courts have produced similar examples.[384] For example, the Third Circuit contrasted how a "philologist" might interpret the word *patient* based on its etymology (from Latin verb *pati* "to suffer") with how a "butcher" or "man in the street" would plainly "recogniz[e]" the word as referring to "professional relationship" with a doctor.[385] Another court observed that *manufacture* "as implied from its etymology originally meant made by hand, but in present-day usage it carries quite a different meaning; it now more nearly means made by machinery, or at least made in large quantities and as part of a regular business."[386]

But again, the counterargument is straightforward. Even if an etymology does not necessarily provide the word's current meaning in all cases, it is nevertheless logically possible and indeed frequently the case that a word's etymology can shed light on the word's meaning in some cases. This is especially so when words are very old or very new; and etymology is especially useful in ascertaining how words apply in unusual or unforeseen applications.

Third, some uses of etymology may fall victim to the etymological fallacy. This is the logical error that a word is necessarily defined by its etymology. As explained above, a word's meaning may or may not coincide with the meaning of its etymological roots. This is ultimately an empirical inquiry. But it is overbroad to argue that "a

383. *Id.* at 810; *cf.* Cohen, *supra* note 349, at 498 n.106 (arguing "the use of etymology in statutory interpretation is not justified. Just like the sounds in words change over time, the meaning of words change over time through processes such as broadening, narrowing, metaphor, amelioration, taboo replacement, and pejoration").

384. *Cf.* HENRY JOHN ROBY, *Preface to* 1 ROMAN PRIVATE LAW IN THE TIMES OF CICERO AND THE ANTONINES, at xvi n.2 (1902) ("The actual meaning of a word is determined by its use, not by its origin.").

385. Guardian Life Ins. Co. of Am. v. Clum, 106 F.2d 592, 595 (3d Cir. 1939).

386. United States v. Baumgarten & Co., 2 U.S. Cust. App. 321, 324 (Ct. Cust. App. 1911).

term's earlier or original meaning offers no assistance in determining present usage."[387]

To be sure, there are many examples where a word's "etymological" meaning does not correspond to its current usage. Thus, *quarantine* likely derives from the Venetian practice of requiring visitors to remain in isolation for "forty days" (*quaranta*) during medieval times; yet today the specific requirements of quarantine are set by law and may deviate from "forty days."[388] The word *decimate* etymologically means "reduce by one tenth" (from Latin *decem*) but commonly means to destroy a large portion of something. Likewise *sinister* etymologically means "left" but today means "evil" or "malevolent." In all these cases, a court interpreting these words may look to their etymology for the history or context of the word. But it would be a mistake to conclude that these historical meanings are also the words' present meanings.

Yet, as demonstrated above, there are many other cases where the etymological meaning corresponds to common usage. Indeed, there will be cases where "present usage" can only be determined by reference to the word's etymology, such as neologisms. It is therefore a fallacy in its own right to assert categorically that etymology can never inform a word's present meaning.

Fourth and finally, some may object that courts should not rely on etymological arguments for practical or logistical reasons: it can be difficult to ascertain a word's etymology.[389] The many "ridiculous" suggestions found in classical authors and even early English authorities highlight this hazard. Even today scholars do not agree on the origins of some words.

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387. Daniel C. Tankersley, *Beyond the Dictionary: Why Sua Sponte Judicial Use of Corpus Linguistics Is Not Appropriate for Statutory Interpretation*, 87 MISS. L.J. 641, 653 (2018).

388. *Cf.* 9 C.F.R. § 93.106(a) (requiring certain birds to be quarantined for 30 days).

389. *See* Kozinski & Volokh, *supra* note 370, at 466 ("Like many other historical inquiries, etymological questions often have no clear, unambiguous answer."); *see, e.g.*, 1 BLACKSTONE, *supra* note 199, at *398 ("An *earl* is a title of nobility so ancient, that its original cannot clearly be traced out.").

But this objection is again overbroad. If a word's etymology is not reliably known, courts need not rely upon it. But where a word's etymology is known with a high degree of probability, this objection no longer applies. The last two centuries have witnessed remarkable progress on deriving the etymologies of words with a high degree of confidence. Many of these are now within hand's reach in the Oxford English Dictionary or other reference works. This is well within the core competence of judges—certainly much more so than navigating corpus linguistic databases.

Indeed, what gaps remain in etymology are often legally irrelevant. Frequently, scholars will know the proximate etymology of a word, even if they cannot trace each root back to its ultimate origins. For example, *homicide* proximately derives from the Latin *homo* (man) and *caedere* (cut or kill). There may remain some uncertainty about the further or "ultimate" etymology of *homo* from Proto-Indo-European or its connection to Sanskrit. But legal interpretation often only requires knowledge of a word's proximate etymology: The crime refers to killing a man.

Overall, these objections highlight some hazards associated with using etymology in legal argumentation. But they are frequently phrased in overbroad terms. It is false to suggest that etymology can never aid in legal interpretation. I therefore suggest the following legal rule as a canon of construction: Where the meaning of a term is uncertain, courts may look to the word's etymology.

V. CONCLUSION

Etymology is useful in legal interpretation. At the very least, it provides a word's origin, history, and context. At most, it can explain a word's significance when other tools of interpretation fail. There is a long tradition of using etymology to understand the significance of legal terms, from ancient philosophers, classical rhetoricians, Roman law, medieval authors,

English jurists, and American courts. Indeed, the use of etymology was once formalized as a branch of rhetoric and specifically extolled by early English authors as useful in legal arguments. Today, courts often cite the etymology of ambiguous terms but do so without an appreciation for this long tradition or a rigorous analysis of precisely how a word's etymology should inform the word's legal interpretation.

This Article has traced the history of etymology throughout legal history. I have tried to establish that arguments from etymology have a long pedigree, were acknowledged as legitimate at the framing of the U.S. Constitution, and have been employed continuously up to modern times. I have further claimed that arguments from etymology are justified and identified several mechanisms whereby etymology can inform the legal significance of terms. I therefore advocate for recognizing the etymological canon. When a legal term remains ambiguous after ordinary-meaning analysis, courts may consult the term's etymology as non-dispositive evidence, provided the etymology is proximate, well-sourced, and not inconsistent with technical usage or controlling context.

These findings have implications for litigants, judges, and educators. Lawyers should make use of every argument in their favor. Where their preferred interpretation aligns with the word's etymology, they should cite it. This may be especially useful when the opposing party seeks to limit the meaning of the word to a narrow, modern definition. Judges should also consult a word's etymology when its meaning or application in doubt. At the very least, it is advisable to include any non-trivial etymology when providing the word's dictionary definition. In many cases, courts can leverage the etymology to ascertain the word's full range of potential meanings, before isolating the one called for by the relevant context. Finally, law school professors and educators can incorporate etymology into their teachings. Every student should know the origins of common terms, such as *voir dire*, *alibi*, and *subpoena*.

Etymologies may be especially useful in recognizing or understanding historical terms found in the common law.

In addition, linguists and philosophers of language should further scrutinize how etymology can in fact be used to understand the present significance of words. Within linguistics, etymology has been consigned to a mere technical subfield without substantial attention to the theory behind etymological arguments. Within philosophy, there is a surprising lack of attention to this problem, aside from the occasional reference to the "etymological fallacy." These are important philosophical questions, which, if deployed in legal cases, can have real-world consequences.

Etymology is not the panacea to every question of legal ambiguity. But it is one of the oldest tools of philologists and a forgotten resource in the context of legal interpretation. It has been endorsed by leading jurists spanning the methodological spectrum. Yet courts apply this tool haphazardly and unconsciously. As the Supreme Court continues to focus on grammatical, philological, and lexicographical arguments, the Court should recognize perhaps the oldest tool in this toolshed: etymology.