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The Importance of Interpretation: How the Language of the Constitution Allows for Differing Opinions

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Introduction

"We the People of the United States, in Order to form a more perfect union… do ordain and establish this Constitution for the United States of America."[1] When the words of the United States Constitution were originally written in 1787, they were meant to establish a newer, working, unified American government; they delegated certain powers and responsibilities to each of the three branches: legislative, executive, and judicial. While the legislative branch, made up of Congress and the House of Representatives, is responsible for creating and passing legislature, it is the judicial branch's responsibility to ensure that legislature is upheld and, in certain cases, constitutional.[2] The Supreme Court of the United States is the highest court in the country, as mandated by the Constitution, with the utmost authority on all cases concerning national constitutionality, although their jurisdiction only extends to certain types of cases, including the following: "Controversies between two or more States; between a State and Citizens of another State; [and] between Citizens of different State."[3] The judicial power of the Supreme Court "extend[s] to all Cases, in Law and Equity, arising under [the] Constitution, [and] the Laws of the United States,' allowing them to render appellate or original decisions on all cases within their jurisdiction concerning the constitutionality of national legislation, state court decisions, and appellate court decisions.[4]

Thus the Supreme Court has the responsibility to understand and interpret the laws and Constitution of the United States as applies to cases; in *Marbury v. Madison*, this power of the Supreme Court was established as both rule and precedent.[5] Often in cases before the Supreme Court, the justices must decide whether a case decision or law is upheld by the Constitution.

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[1] *U.S. Const.*
[2] *U.S. Const. art. III, § 2.*
[3] *U.S. Const. art. III, § 2.*
[4] *U.S. Const. art. III, § 2.*
[5] *Marbury v. Madison*, 5 U.S. 137 (1803).

However, the overall understanding and interpretation of the Constitution by the Supreme Court has changed as often as the Chief Justices of the Court. Each Supreme Court Justice, as well as all lower federal judges, has an individual idea of how to interpret the Constitution; this particular difference of ideas and methods allows for any two judges applying the Constitution to the same legal issue to likely reach different conclusions.[6] These discrepancies in the way that justices interpret the Constitution are highly influenced by the language utilized in these historic legal documents. Although legal language, by itself, can be difficult to fully comprehend, the language in the Constitution and the Bill of Rights is especially ambiguous, allowing for multiple possible interpretations and understandings of the real meaning of the governing documents. This linguistic ambiguity, whether purposeful or accidental, is one reason for so much variation in the past and current understandings of the Constitution.

Lexical (Semantic) Ambiguity

Linguistic ambiguity and vagueness in legal documents can be attributed to several factors; in the United States Constitution, the two most likely culprits of ambiguity are lexical (semantic) and syntactic. The first, lexical ambiguity, addresses the differences in meanings of individual words (while semantic ambiguity is related, it focuses on the meanings of words within certain contexts).[7] In addition, certain words can even be lexically or semantically vague, as opposed to ambiguous; with ambiguity, a word might have more than one possible meaning depending on its use, but with vagueness, a word has only one real meaning, but is used in a context that makes its purpose unclear.[8] Lexical ambiguity presupposes that no meaning of a word is necessarily incorrect, as many words have developed multiple meanings over the history

[6] Brian Bix, *Law, Language, and Legal Determinacy* (Oxford: Clarendon Press, 1993), p. 108.
[7] Timothy A. O. Endicott, *Vagueness in Law* (Oxford: Oxford University Press, 2000), p. 50.
[8] Endicott, *Vagueness in Law*, p. 54.

of the English language; instead, a word in a certain context might only have one logical meaning.[9] For example, the word "jurisdiction" has the following definitions in two separate lexicons:

> jurisdiction, *n*: 1. a government's general power to exercise authority over all persons and things within its territory; 2. a court's power to decide a case or issue a decree; 3. a geographic area within which political or judicial authority may be exercised; 4. a political or judicial subdivision within such an area.[10]
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> jurisdiction, *n*: the power to act juridically.[11]

However, within the context of Section 2 of Article III of the Constitution, the meaning of "jurisdiction" in context might mean the types of decisions that the Supreme Court has power over (original jurisdiction or appellate jurisdiction).[12] Therefore, the literal, "plain" meaning of a word can be different from two meanings of that word in different respective contexts, even though all of the meanings are accurate for that word.[13] This ability for any word to convey different meanings in specific contexts, regardless of the literal, detached meaning of that word, greatly affects the linguistic ambiguity of the Constitution.

Syntactic (Phrasal) Ambiguity

Syntactic vagueness and ambiguity have a certain amount of bearing on Constitutional ambiguity as well, as the combination of lexically ambiguous or vague words into ambiguous or vague phrases and sentences can only cause more complexities when it comes to understanding

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[9] Bix, *Law, Language, and Legal Determinacy*, p. 114.
[10] *Black's Law Dictionary*, ed. Bryan A. Garner, 9th ed., (St. Paul: West Publishing Co., 2009), p. 927-928.
[11] Christine Rossini, *English as a Legal Language*, 2nd ed., (London: Kluwer Law International, 1998), p. 35.
[12] *U.S. Const. art III, § 2.*
[13] Bix, *Law, Language, and Legal Determinacy*, p. 73-74.

the overall meaning. Vagueness in phrases is a more commonplace factor of linguistic ambiguity, possibly more so than lexical ambiguity; even if a phrase is clear in one context, it may be unclear when given a slightly different context.[14] According to one approach, a phrase can be analyzed by both content and force: while the force of the phrase may change (perhaps from a declarative statement to an imperative statement), the content of the phrase remains the same.[15] However, it is also a possibility that a change in the force of a phrase could in fact change the content of the phrase, since some words have different associations within different types of phrases (for example, absolute words such as "no" or "all" have far different meanings in rules than they do in descriptive statements).[16] Although the concept of phrasal vagueness might be more of a straightforward theoretical explanation than that of lexical ambiguity, the effects of this type of linguistic ambiguity are no less complex. The possible interpretations that arise from phrasal and syntactic vagueness, especially in the context of the Constitution, can result in a varying number of opinions on certain laws.

Interpretations of Legal Linguistic Ambiguity

Vagueness of language, although not always evident, is present within the Constitution. Although it is inherent in the language used, the linguistic ambiguity does not really present itself until ambiguity of meaning (or variance of interpretation based on those meanings) is sought. The Constitution no longer is thought of as one definite entity anymore; instead, it can be thought of as "words of the document as those words were understood at the time of enactment" or "ideal justice" or "the traditions and collection conscience of [the American] people."[17]

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[14] Bix, *Law, Language, and Legal Determinacy*, p. 71.
[15] Bix, *Law, Language, and Legal Determinacy*, p. 71-72.
[16] Bix, *Law, Language, and Legal Determinacy*, p. 72.
[17] Steven D. Smith, "Law as Language?", *Mercer Law Review*, 63 Mercer L. Rev. 891 (2012), p. 895.

The linguistic ambiguity of the Constitution opens the law to any number of possible interpretations, especially by the Supreme Court. Although judicial interpretations can vary anywhere on the spectrum from "obviously right" to "inventive," most interpretations follow certain types of methods.[18] Many common constitutional interpretations are just a reformulation of a rule by a justice, or just new answers to certain legal questions; however, there are more specific means by which to determine constitutional meaning.[19] There are certain accepted standards by which to interpret ambiguity in the Constitution: linguistic interpretation (based on the meaning of words); logical interpretation (which is systematic); historical interpretation (according to historical origins); and teleological interpretation (according to the purpose of law).[20]

The purpose of the different types of interpretations is for a judge or court to reach either objective or subjective correctness in constitutional interpretation; objectivity "refers to getting the meaning right," yet it is usually influenced by the subjectivity of consensus.[21] Correctness of meaning, especially among the Supreme Court justices, often relies on consensus of meaning, through agreement one of several factors: the correct interpretation; the correct authority to refer to; or the correct decision-procedure to use.[22] Yet preference for objectivity or subjectivity is not the true reason for judicial interpretation. The court's responsibility is towards the "wise development of the law" through its attempts to give effect to the law; the linguistic ambiguity of the Constitution allows for this development through judicial interpretation and reasoning.[23]

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[18] Endicott, *Vagueness in Law*, p. 179.
[19] Endicott, *Vagueness in Law*, p. 179.
[20] Olga Burukina, "Legal Language: A Realm of Contradictions", *Contemporary Readings in Law and Social Justice*, vol. 4 (New York: Addleton Academic Publishers, 2012), p. 715.
[21] Bix, *Law, Language, and Legal Determinacy*, p. 65.
[22] Bix, *Law, Language, and Legal Determinacy*, p. 65.
[23] Endicott, *Vagueness in Law*, p. 183.

Examples of Linguistic Ambiguity within the Constitution and its Amendments

Although the whole of the Constitution seems to be prone to varying interpretations by different justices, certain sections of both that particular document as well as its amendments are more likely to be highly debated within cases, all of which is evidence of linguistic ambiguity. Well-known within both the court system as well as the public sphere, the following excerpts from the Constitution and the Bill of Rights have been the subject of much judicial interpretation by the Supreme Court:

Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;… to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States…"[24]

Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press."[25]

Amendment XIV, Section 1:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law."[26]

Amendment XV, Section 1:

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[24] *U.S. Const. art. III, § 2.*
[25] *U.S. Const. amend. I.*
[26] *U.S. Const. amend. XIV, § 1.*

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[27]

Although these particular parts of the Constitution do not outwardly seem as though they are necessarily ambiguous or open to interpretation, their meanings can be construed differently based on the situations in which they are being analyzed. In fact, the linguistically open nature of these two documents, including the excerpts listed above, effectually means that neither truly "govern[s] us" anymore; since a variety of interpretations of the laws within these governing documents are possible, there are no longer any structured, certain rules by which case outcomes are decided, to the point "that when people refer to the Constitution, they mean very different things."[28] Such ambiguity in defining and interpreting the law in the Constitution has become evident through the document's history, as evidenced by all Supreme and federal court cases addressing any issue of constitutionality.

Judicial Interpretation of Constitutional Ambiguity

Although any person is free to read the Constitution and interpret the meaning of its contents for themselves, the Supreme Court Justices have the highest authority to constitutional interpretations when it comes to legislation as involved in lower court decisions. Yet their common role in the United States' government does not ensure that each justice shares the same opinion on interpretation as any other. For each Supreme Court justice considering a case, there must be one right answer, according to the interpretation of the Constitution by that justice; since this "right" answer will be subjective to the logic and morals of that justice's personal

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[27] *U.S. Const. amend XV, § 1.*
[28] Smith, "Law as Language?", p. 895.

interpretation, it must vary, whether slightly or drastically, from the "right' answers of those other justices.[29] In addition, each justice may strive for a certain outcome in the case, believing it to be the most correct interpretation of the law in the Constitution and of the facts of the case.[30] Yet with a panel of judges, such as with the Supreme Court, there is a need to reach a majority vote in favor of one or another outcome; so contrary to the idea described above (that a justice will vote for his "right" answer outcome), a justice may render an opinion or vote that is contrary to their own interpretation, solely for the benefit of ensuring the case is decided in the majority.[31]

The four excerpts from the Constitution that are listed earlier have been exceptionally ambiguous for Supreme Court justices, as they are often interpreted somewhere along a wide spectrum of "right" answers. For each excerpt listed above, there are a certain number of important, detailed Supreme Court cases that have resulted in decisions that rely on various interpretations of that portion of the Constitution; without linguistic ambiguity within the Constitution, the following variety of case decisions could not be possible.

Article III, Section 2:

Several Supreme Court cases have been concerned with the establishment of jurisprudence for certain courts within the United States court system. With the separation of individual state court systems from federal court systems, many issues arise over whether or not a certain court has jurisdiction over a case.[32]

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[29] Bix, *Law, Language, and Legal Determinacy*, p. 109.
[30] Bix, *Law, Language, and Legal Determinacy*, p. 113.
[31] Bix, *Law, Language, and Legal Determinacy*, p. 114.
[32] Richard A. Leiter and Roy M. Mersky, *Landmark Supreme Court Cases: The Most Influential Decisions of the Supreme Court of the United States*, 2nd ed., vol. 2 (New York: Facts on File, Inc., 2012), p. 648.

In *Martin v. Hunter's Lessee* (1816), the issue was whether or not the Supreme Court, in cases involving the federal Constitution, had appellate jurisdiction over the highest state courts.[33] In this case, the Supreme Court justices decided that the 25th section of the Judiciary Act of 1789, which allowed for U.S. Supreme Court review of final state court decisions when such decisions concerned the federal Constitution, laws and treaties, was in fact constitutional; Section 2 of Article III in the federal Constitution states that the Supreme Court jurisdiction "extend[s] to all Cases… arising under this Constitution, the Laws of the United States, and Treaties made… under their Authority."[34] This particular panel of justices seemed to interpret the Constitution rather as logical and linguistically explicit; rather than interpreting the words and syntax of this law, the justices employed the plain meaning of the law.

In the case of *Wayman v. Southard* (1825), the issue presented to the Supreme Court concerns federal courts within states, and whether those courts should have to apply the laws followed by the respective states in which they are located.[35] The Supreme Court upheld the Congress' ability to delegate power to the federal courts, even over the laws of the state in which the federal court is located.[36] The justices of the Supreme Court, in this case, approached the legislature's delegation of jurisdictional power as rather straightforward; the Congress enables the federal courts to have a certain power within their jurisdiction, and state legislation cannot refute that power.

In the case of *Erie Railroad Company v. Tompkins* (1938), the issue addressed is whether federal or state law applies in a case before a federal court when the plaintiff and defendant are

[33] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 653-654.
[34] *U.S. Const. art. III, §2.*
[35] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 657.
[36] Leiter and Merksy, *Landmark Supreme Court Cases*, p. 657.

citizens of different states.[37] On this matter, the court decided that the law of the state where an incident (in this case, an accident) occurred should take precedent over federal law, meaning the only applicable laws in this particular situation were state laws.[38] In this particular instance, the majority of the Supreme Court chose to take the phrases "between Citizens of different States" and "under… the Laws of the United States" in Article III, Section 3 as being somewhat ambiguous; although the federal courts certainly had jurisdiction over this case, the Supreme Court ruled in favor of state laws over federal laws in this instance. Due to lexical ambiguity, the majority of the justices could assume that, if there was any absence of a federal statute, the state statute could take precedence in any federal jurisdiction.

Amendment I:

The first amendment addresses the freedom of the press, among others freedoms of American citizens. Federal regulation of the press has always been under scrutiny, and within the cases detailed below, that attempt at regulation continues to be questioned.

In the case of *Lovell v. City of Griffin* (1938), the Supreme Court decided on the issue of whether or not a local city government could require a person to receive written permission from a city manager to distribute any kind of literature.[39] In a unanimous decision, the Supreme Court decided that this was in fact an unconstitutional statute. [40] The words of Amendment I states that "Congress shall make no law… abridging the freedom of speech, or of the press;" although the legislature mentioned in the Constitution is "Congress," the first amendment has been extended to apply to all forms of government, rendering the written approval statute of the City of Griffin

[37] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 660.
[38] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 661.
[39] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 747.
[40] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 747-748.

unconstitutional.[41] There is no contemplation of ambiguity in this matter; the justices clearly take the word "no" as an absolute and in no way open to interpretation.

In the case of *New York Times Company v. United States* (1971), the situation arose during the Nixon administration, and addressed the issue of whether or not his administration violated the First Amendment in trying to prevent publication of "classified" information.[42] The majority of the Supreme Court held that the action of the Nixon administration had indeed been unconstitutional; however, each concurring justice filed his or her own opinion, since each had interpreted the language of the First Amendment differently.[43] The Nixon administration claimed that the government could have been in imminent danger if the press had released the "classified" information; yet the majority of the court justices believed that this "danger" was evident enough to overcome the first amendment freedom of press.[44] Clearly, in this later case, the justices were more likely to acknowledge the possible ambiguity (and therefore multiple interpretations) of the words and phrases within the First Amendment as it concerns matters of national security.

Amendment XIV, Section 1:

The Fourteenth Amendment is imperative to ensuring the rights of all those who are determined to be citizens of the United States are recognized as such; however, the interpretation of this particular clause of the Constitution does not always ensure such a result. Since the creation of this amendment, there have been several cases that have taken the first section to be

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[41] *U.S. Const. amend. I*
Leiter and Mersky, *Landmark Supreme Court Cases*, p. 747-748.
[42] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 752.
[43] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 752-753.
[44] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 752-753.

somewhat linguistically ambiguous, and this has resulted in several case decisions that, upon first reading, don't seem to have interpreted the correct meaning of the law.

In *Hurtado v. People of the State of California* (1884), the Supreme Court addressed the issue of whether or not the due process clause of the Fourteenth Amendment requires indictment by a grand jury in a state criminal prosecution; in this particular case, the Supreme Court decided against the accused, stating that "due process" did not include indictment by a grand jury within a state prosecution.[45] The opinion of the court seems to be a word-for-word interpretation of the due process clause; since there is no mention of a "grand jury indictment" within the due process clause, the justices took the clause to have no ambiguity, either lexically or syntactically.[46]

In the case of *Jacobson v. Commonwealth of Massachusetts* (1905), the issue at hand was whether or not, under the due process clause of the Fourteenth Amendment, an individual has the right to be exempted from a state law requiring vaccination for a disease.[47] The Supreme Court found the state law for mandatory vaccination to be constitutional and not in violation of the due process clause of the Fourteenth Amendment.[48] The due process clause only lists the deprivation of life, liberty, or property as requiring due process of law; in this case, the majority of the justices decided that the lexically ambiguous word "liberty" did not encompass exemptions that could risk the welfare of the state.[49] Instead, the Court supported the state's authority to use "police power" in this instance, for the common good of all the state citizens.[50]

In the famous case of *Hamdi v. Rumsfeld* (2004), the Supreme Court faced the issue of whether a U.S. citizen held as an enemy combatant could be indefinitely detained without basic

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[45] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 389.
[46] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 389-390.
[47] Leiter and Mersky, *Landmark Supreme Court Cases,* p. 397.
[48] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 398.
[49] *U.S. Const. amend. XIV, §1.*
[50] Leiter and Mersky, *Landmark Supreme Court Cases,* p. 398.

due process rights.[51] The Supreme Court found in favor of the detainee, agreeing that a detainee had basic due process rights, such as the right to counsel and the right to state his plea before "a neutral decision maker," with could be either a court or a military tribunal.[52] The majority opinion of the court seems to use a literal interpretation of the clause, rather than delving into its ambiguity; since the Fourteenth amendment mentions its applicability to all citizens of the United States, and since Hamdi was a citizen, he had access to basic due process rights.[53]

Amendment XV, Section 1:

The Fifteenth Amendment, in the past century, had been the subject of many of the most controversial cases; since it concerns the abridging of rights based on "race, color, or previous condition of servitude," it has been the law under argument for many of the civil rights cases in history.[54] Unfortunately, this first section of the Fifteenth Amendment is lexically and syntactically ambiguous enough that it has been open to a variety of interpretations in the past.

In the controversial case of *Plessy v. Ferguson* (1896), the Supreme Court was faced with the issue of whether or not separate but equal accommodations in interstate commerce, based on race, were in fact constitutional.[55] In an almost unanimous majority opinion, the Supreme Court found that the separation of person by race was in fact constitutional, as it did not degrade or make any race inferior to the other, and it did not destroy the legal equality of any race.[56] This seems to clearly be an interpretation utilized in order to achieve a certain outcome, rather than an interpretation based on logic; the ambiguity of the word "abridged" it fully taken advantage of,

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[51] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 492.
[52] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 493.
[53] *U.S. Const. amend. XIV, §1.*
[54] *U.S. Const. amend. XV, §1.*
[55] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 67.
[56] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 68.

and is interpreted in favor of segregation. (N.B.: The decision in *Plessy v. Ferguson* was later overturned in the case of *Brown v. Board of Education of Topeka* (1954); in addition to utilizing the linguistic ambiguity of the Constitution, the Supreme Court Justices implemented the use of scientific research and studies to reach their decision in this case.[57] Although linguistic ambiguity is a major factor in constitutional interpretation, there are other major factors that have influence as well.)

In the case of *Lane v. Wilson* (1939), the Supreme Court was again faced with an issue from Oklahoma; in this instance, the constitutionality of the voter registration law of 1916, which denied qualified citizens the right to vote, was called into question.[58] The majority of the court was of the opinion that the law, which gave voting rights to Caucasian citizens but not necessarily to African American citizens, was inherently unconstitutional.[59] The justices, again, took the plain meaning of the phrase "citizens of the United States" within the Fifteenth Amendment to be all citizens, and they did not allow for any ambiguity about the terms of "infringe" or "abridge".[60]

Public Interpretation of Constitutional Ambiguity

The Justices of the Supreme Court are responsible for interpreting the meanings of all the laws within the Constitution and for applying those interpretations to cases in which constitutionality of a statute is called into question; however, they are not the only people to whom the Constitution is available for interpretation. The interpretation of the Constitution by lay persons, or regular citizens of the United States without any legal training, can often lead to

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[57] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), *Decisions of the Supreme Court of the United States*, ed. Ernest H. Schopler, 98 L ed. (Rochester: Lawyers Co-Operative Publishing Co., 1954), p. 873-881.
[58] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 86.
[59] Leiter and Mersky, *Landmark Supreme Court Cases*, p. 86.
[60] *U.S. Const. amend. XV, §1.*

similar opinions as those reached by legal authorities. Regardless of whether a person has the ability to identify ambiguous lexicon or syntax, he is still able to realize that an interpretation, while not necessarily logical, is entirely possible if the language allows for it.

In a survey conducted within a group of five male and female college students, none of whom have attended law school or received any formal legal training, four different questions were asked, each addressing a different part of the United States Constitution.[61] These four questions addressed the following four different sections of the Constitution: Article III, Section 2; the First Amendment; Section 1 of the Fourteenth Amendment; and Section 1 of the Fifteenth Amendment.[62] Each of the four questions had three to four possible responses; each of these responses was a Supreme-Court-decision-based interpretation of the question's respective section of the Constitution.[63] Each of these Supreme Court case interpretations is slightly different from the others; some have never been overturned, while others have been struck down as unconstitutional. Each person surveyed was able to choose multiple answers, under the request that they choose only answers which they thought were logically sound.[64]

For the questions on Article III, Section 2 and Section 1 of the Fourteenth Amendment, those persons surveyed were likely to only choose one answer, although all options were available.[65] For the question on the Fourteenth Amendment, eighty percent of all those surveyed chose the interpretation that "all citizens of the United States are entitled to due process of law, with no exceptions;" however, twenty percent of those surveyed concluded that "citizens of the United States are entitled to due process of law, but only on a case-by-case basis," and a separate

[61] Christina J. Banfield, "Interpretation of Legal Language Structure" (survey for undergraduate thesis, University of Tennessee, 2014).
[62] Banfield, "Interpretation of Legal Language Structure" (survey).
[63] Banfield, "Interpretation of Legal Language Structure" (survey).
[64] Banfield, "interpretation of Legal Language Structure" (survey).
[65] Banfield, "Interpretation of Legal Language Structure" (survey).

twenty percent also concluded that "citizens of the United States are entitled to due process of law, but this privilege could be met by either the judicial branch or military tribunals, depending on the situation."[66] While one answer seemed to be the most common interpretation, it was by no means the only logical one; the ambiguity of the due process clause was noticed by at least twenty percent of those surveyed. Yet with the question on Section 2 of Article III, all of those surveyed gave exactly one answer.[67] Sixty percent of those surveyed concluded that "the federal courts of the United States only have jurisdiction over appeals of State court cases that deal with matters specified in the Constitution;" twenty percent decided that "the federal courts must apply the common laws of their respective States into their own proceedings in all cases;" and the remaining twenty percent interpreted the section to mean that "the federal courts must apply constitutional values, the laws of the United States, and treaties when they are brought cases… [and] no mention of state law is given… credit to be applied preceding the overarching laws of the federal Constitution."[68] While the majority of those surveyed could only logically interpret the law in one manner, others were able to utilize the available language ambiguity to logically decide upon a different interpretation.

The results of the question on Section 1 of the Fifteenth Amendment are most similar to those of the Fourteenth Amendment question; however, each of the answers was chosen by at least twenty percent of those surveyed. The most popular interpretation of this section of the Fifteenth Amendment was that "any statutes that specifically prohibit persons of any race from voting are unconstitutional."[69] This particular response, while lexically and syntactically descriptive, results in an absolute statement. Each of the other three responses were chosen only

[66] Banfield, "Interpretation of Legal Language Structure" (survey).
[67] Banfield, "Interpretation of Legal Language Structure" (survey).
[68] Banfield, "Interpretation of Legal Language Structure" (survey).
[69] Banfield, "Interpretation of Legal Language Structure" (survey).

by no more than twenty percent of those surveyed; however, the fact that each of the four responses was chosen by one person, at the very least, is evidence of the linguistically ambiguous nature of the Fifteenth Amendment.[70]

The last question addressed the First Amendment, specifically the right to freedom of the press.[71] This was the only question for which each answer was chose by at least twenty percent of those surveyed, but no answer was chosen by more than forty percent of people.[72] The interpretation of the First Amendment pertaining to local legislature (that "local legislature cannot infringe on any person's right to the freedom of the press") was the least chosen option, at twenty percent.[73] The other three answers were all chosen by forty percent of those surveyed.[74] These results indicate that almost half of those who answered this question chose more than one result; therefore one person was able to logically determine more than one interpretation for this particular amendment, proving the overall linguistic ambiguity of this particular law.[75]

Although the statistics of the survey results are useful in determining which interpretation seemed to be the most widespread of popular, it is not the best evidence of linguistic ambiguity. In fact, it is the variance of answers that really proves the presence of ambiguity within the legal language of the Constitution. No interpretation was chosen by one hundred percent of those surveyed, and in almost all of the questions, every interpretation was chose by at least one person who participated in the survey.[76] The fact that all of these amendments and articles are linguistically ambiguous enough to result in more than one logical interpretation is clear evidence of linguistic ambiguity within the Constitution.

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[70] Banfield, "Interpretation of Legal Language Structure" (survey).
[71] Banfield, "Interpretation of Legal Language Structure" (survey).
[72] Banfield, "Interpretation of Legal Language Structure" (survey).
[73] Banfield, "Interpretation of Legal Language Structure" (survey).
[74] Banfield, "Interpretation of Legal Language Structure" (survey).
[75] Banfield, "Interpretation of Legal Language Structure" (survey).
[76] Banfield, "Interpretation of Legal Language Structure" (survey).

Conclusion

Linguistic ambiguity is a major cause of the variety of interpretations of the Constitution, as well as many other types of legal discourse. The ambiguous language of the Constitution and its amendments is a large reason for its ability to be reviewed in a diverse number of ways; however, it is not the only cause of variant interpretations. Over the past century, evidence such as scientific research and empirical studies has become a factor in deciding many cases concerning the Constitution (as shown in *Brown v. Board of Education of Topeka*); yet as these types of evidence influence cases of constitutionality, so do those case decisions influence possible linguistic interpretations.[77] As often as judicial views on the Constitution change, so do the meanings of the words and phrases on which those judicial views are founded. Whether the words, phrases, or clauses are the object of ambiguity for Supreme Court justices, no interpretation or understanding, and therefore no opinion, will be exactly the same. The dynamically ambiguous nature of the legal language utilized in the Constitution has been a factor in interpretational variance, and will continue to have its influence in Supreme Court decisions concerning constitutionality.

[77] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), *Decisions of the Supreme Court of the United States*, p. 873-881.

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