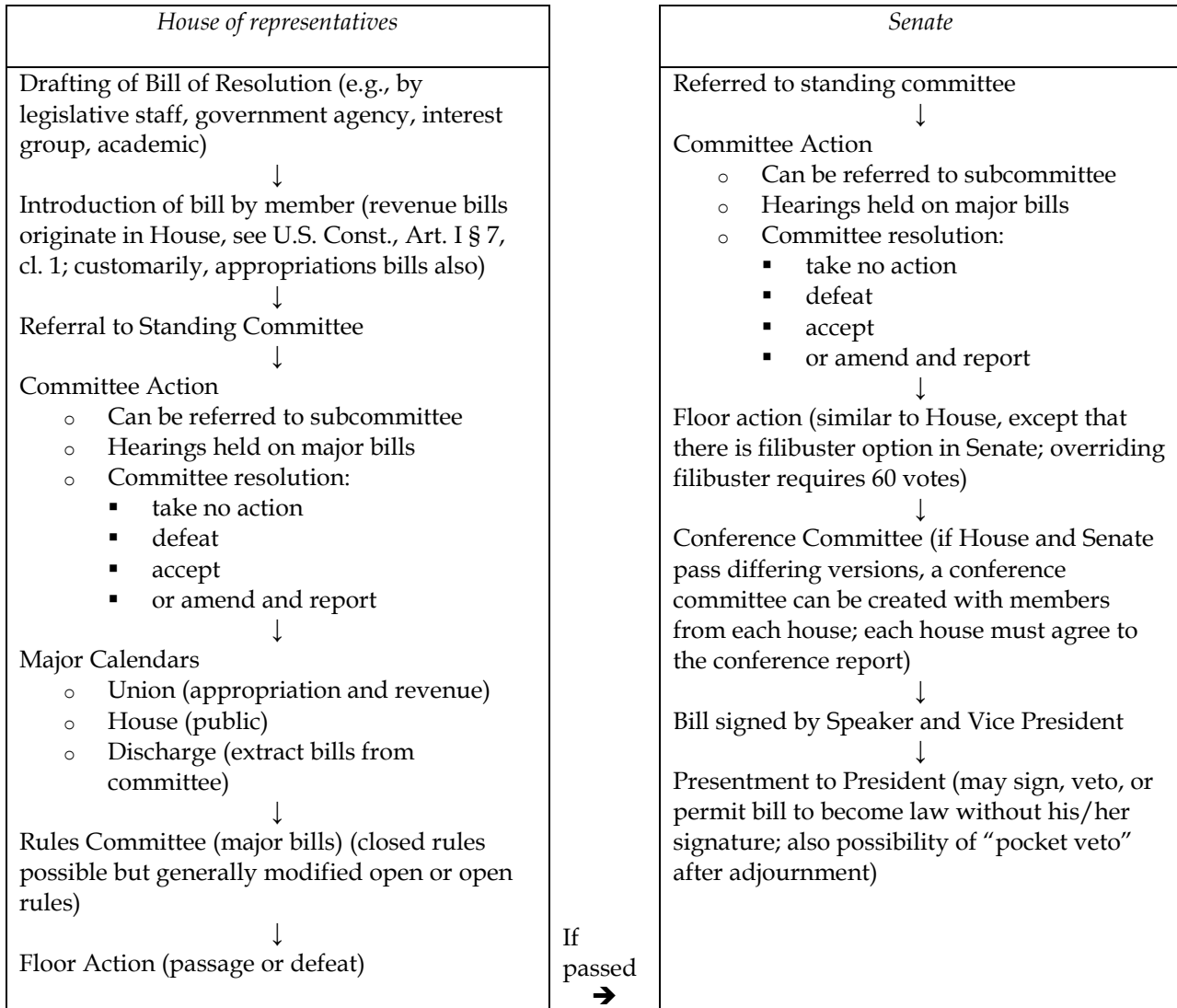


Legislation

Introduction to the Legislative Process

A. How a Bill Becomes a Law (The Civil Rights Act of 1964)



1. Vetogates are good under Proceduralist theories b/c (1) it's a roadblock, (2) produces deliberation.
2. President is broadly capable of setting the legislative agenda through popular support & role
3. Legislative Process is a matter of compromise among groups where no one gets exactly what they want.
4. Floor debates are times for Congressmen to talk to their constituents, not their colleagues.

B. A First Look at Statutory Interpretation (Weber)

1. Criteria for Proper Interpretation

- a. Rehnquist – Give Effect to Intent:
 - i. What did the drafter's intend the result of this question to be?
 - ii. Court is an agent of Congress.
- b. Brennan's Purpose:
 - i. Where there's no drafter's intent b/c it wasn't considered, find purpose to make their thoughts fit the current situation. *Weber*
 - ii. Use text to discern purpose & intention, not just meaning
- c. Blackmun: Beyond Intent
 - i. Find the best answer & make sure it's coherent with intent b/c legislator's don't intend for statutes to die with time. *Weber*
 - ii. Imagine legislative statements in favor/against the legislation.

C. Theories of the Legislative Process

Pluralism – Bargaining & Compromise

- a. Citizens organize into groups for political action where politics helps resolve their competing interest group desires.
- b. Large groups only form around (1) selective benefits (AARP), or (2) Ideology (NRA).
 - i. Free-Rider Problem hinders the development of interest groups.
 - ii. Interest groups form around already organized, small groups.
- c. Schools of thought:
 - i. Interest-Group Liberalism
 - 1. Competing interests are usually balanced by counter groups and small minorities generally lose to broader groups.
 - 2. Factions have a stabilizing influence.
 - ii. Realist Pluralism
 - 1. Interest Group Pluralism only serves the interests of well-connected citizenry

Proceduralist Theory – Deliberation & Vetogates are Good

- Congress is designed to produce well-deliberated laws. Well deliberated laws prevent hastiness & protect against a narrow majority faction dominating.
- a. Republican Theory
 - iii. Deliberation & Arguing improve the final product's quality

- iv. Legitimacy of government rests on commitment of officials to engage in practical reasoning & deliberation for the common good.
- b. Liberal Theory: Statutes should be hard to enact
 - v. Favors private autonomy & Free markets
 - vi. Congressional structure designed to discourage widespread or extreme social and economic legislation.

D. Precedent

1. Vertical Coherence
 - a. Formalism: interpreter shows his interpretation is coherent with authoritative past sources – original intent, precedent, traditional & customary norms
 - b. Stability & predictability in the system
2. Horizontal Coherence
 - a. Coherence with all of law & efficacy in the present
 - b. Realists: there is no determinate past to which judges can link their current interpretation & law should be present-oriented
3. Legal Process Synthesis
 - a. Law must be predictable, but in touch with the needs of people today.
4. Stare Decisis
 - a. Statutory precedent: exceptional adherence, super strong presumption of correctness
 - b. When to Overrule:
 - i. Clearly Erroneous Precedent where LH shows mis-interpretation
 - ii. Stare Decisis of other cases cutting the other way
 - iii. Congressional non-acquiescence by actions in similar areas
 - iv. Requirements of a dynamic statutory scheme
 - v. Reliance Interests

Hierarchy of Stare Decisis	
Overruling Constitutional Precedent	Stare Decisis is not rigidly binding since Congress cannot correct its mistakes
Overruling CL Precedent	Normal Stare Decisis; presumption of correctness
Overruling Statutory Precedent	Exceptional adherence; super strong presumption of correctness.

E. Public Choice Theory

1. When there's an ambiguity, assume it's the least enactable preference.
2. Try to apply econ theory to leg action: everyone acts in own self int

- a. Legislators are actors in their own interests – stmts r to make voters happy & actors r tio try to increase campaign contributions to reach lobbyists.
- 3. Use to say b/c of this cant trust legis history since stmts don't mean much – trying to please ppl
 - a. Committee as a whole doesn't necessarily pt out whart theyre actually doing not to make voters or lobbyists happy. Followers would follow the texr absolutely, no legis history.

	Distributed Cost	Concentrated Cost
Distributed Cost	<ul style="list-style-type: none"> -Most in line with public interest. -Large public goods -Interpret the statute as is, not narrowly. 	-Judges should look for agency capture where the agency is representing a small interest & not the public welfare.
Distributed Benefit	<ul style="list-style-type: none"> -Industry Subsidies -This is rent-seeking so the judge should do anything they can to construe this statute narrowly. -Give the minimal effect possible to the interest advanced. 	-Interpret the statute normally b/c both sides have access to the legislature to influence a change.

F. Dialogue between Congress and Court

G. Single Subject Rule and other Process Adjustments

1. Process Concerns:
 - a. Rent Seeking by private groups
 - b. Log-Rolling:
 - i. pairing of subjects to unite minority factions for majority passage
 - ii. Limited by using purpose as a criterion
 - c. Hostage Votes – to pass something valuable, need to pass something not
 - i. Limited by using purpose as criterion
2. Process Solutions
 - i. Single Subject Rule:
 - a. A bill may only refer to one subject & must have a title reflecting it
 - ii. Germaneness Rule
 - a. House requires amendments to be germane to the proposed bill
 - iii. Can't attached unrelated riders to appropriations bills
 - a. Extraneous provisions added to the statute
 - iv. Generality Requirements
 - a. Legislation should serve public, not private interests

- b. Rule against special legislation where general law can be applicable
 - c. State laws must apply equally across the state
- v. Line Item Vetoes

Theories of Statutory Interpretation

Intentionalism

1. Find & follow the drafter's intent in order to resolve ambiguity.
 - a. Use of general intent slides into purpose.
2. It is a familiar rule, that a thing may be within the letter of the statute & yet not within its spirit, nor within the intention of its makers. *Holy Trinity*
3. Sources Used:
 - a. Language & Statute Structure Choices, Legislative Purpose, Canons of Construction, Extrinsic Materials, Facts of the Case

Ways to Find Intent

1. Imaginative Reconstruction: What if Congress had been asked this question at the time?
2. Mischief Rule to Find Intent – Ask:
 - a. What was the CL before the act?
 - b. What was the mischief and defect for which the CL did not provide?
 - c. What remedy the legislature has resolved to cure the disease?
 - d. The true reason of the remedy?
3. Golden Rule
 - a. Take the whole statute together and construe it all together giving the words their ordinary significance unless it would produce an absurd result.
 - i. Absurd Result: if common sense says its absurd → legislature couldn't have intended that interpretation
4. Literal Rule:
 - a. If the language of a statute is plain (admitting only 1 meaning) and the law is within Congress's powers, then it must be enforced regardless of an absurd result b/c absurdity is a subjective determination.

Critiques of Intentionalism

1. Spurious Interpretation: Need to distinguish revising statutes to meet present policy goals from discovering intent to help find the rule the drafter intended.
2. Finding Collective Intent of the Congressional body is impossible.

3. No adequate restraint on judges.

Legal Process (Purposivism)

1. Apply the interpretation that best carries out the statute's purpose.
 - a. Laws are created by policy-makers to achieve a purpose – realism
 - b. Institutional architecture constrains law as policy making.
2. Purposivism
 - a. Every proposition of law is to be interpreted in light of its evident purpose. In some cases, consider the purpose in light of the specific circumstances. *Speluncean Explorers*
3. Hart & Sacks – Legal Process
 - a. Law has a purpose because it is the doing of something.
 - b. Assume legislators are reasonable people acting reasonably – use imaginative reconstruction to determine what a legislator would think about the ambiguity.
 - c. Meaning depends on context since language is a social institution.
 - d. Legitimacy comes from reason-based inquiry
 - e. Finding Purpose – *Fuller Theory*
 - i. What was the fact scenario at the time of drafting (core case)?
 - ii. Develop hypos deviating from the core.
 - iii. Do hypos fit within the purpose of the core case? I
 1. Creates the outer bounds of the purpose.
 2. Look to case at hand to see if it fits inside or outside the limits.

Legal Process Debates

1. Correcting Legislative Mistakes
 - a. While the wording of a statute may give rise to some confusion, the result of an obvious mistake should not be enforced, particularly when it overrides common sense & the evidence statutory purpose. *Shine; Amalgamated*
 - i. Easy to correct b/c Court is a co-equal partner with the legislature
 - b. Cf: Textualists find fixing mistakes tenuous since it destroys legal legitimacy if people cannot rely on the letter of the law.
 - i. Room for greater clarity of language is not freedom to “correct mistakes” *Locke*
2. Dynamic Statutory Interpretation – Changed Circumstances
 - a. Statutes should be construed in new ways when there are new circumstances that Congress would not have been able to foresee. *Updating* purpose to new times.
 - i. Changes in Social Context
 - ii. New Legal Rules & Policies
 - iii. New meta-policies
3. Theory of Bundled Assumptions: Changes overtime unwrap the bundle & when its unraveled new legislation is likely required or updating should occur.

4. Coherence with Public Norms – Outer Edge of Purposivism
 - a. Court goes against the text where the text doesn't lead to an absurd result to reach a better result.
 - i. Repeatedly Retold Anecdote: Tools of reading should be incorporated when forming an interpretation

"Plain Meaning"

1. Old Plain Meaning Rule
 - a. If the text is plain in meaning, you cannot consult LH, but if it's ambiguous, LH is a fine source of interpretation.
2. Statutory plain meaning is presumptively the proper interpretation of intent. *TVA v. Hill*
 - a. Use LH to confirm plain meaning or in rare cases show plain meaning is inappropriate b/c it leads to an absurd result.
3. Text should control unless the absurd result is demonstrably at odds with the LH. *Griffin*

Textualism

1. What would the ordinary person without a legal background draw from the text?
 - a. Finding the best and most coherent textual answer.
 - b. People are the one's affected so they should be able to read the law.
 - c. Use dictionaries and other texts & don't construe narrowly to avoid judicial law making
2. Disciplined reading will cause the legislature to produce better quality laws
3. Legislative History is illegitimate b/c it is not the law.
 - a. Use only when you can't get an ordinary meaning out of the text or an absurd result occurs from that reading. *WV University v. Casey*
4. The Best Answer is the Meaning which is:
 - a. Most in accord with context & ordinary usage, and thus most likely to have been understood by the whole Congress which voted on the words of the statute and the people it was imposed on, and
 - b. Most compatible with the surrounding body of law into which the provision must be integrated – presume compatibility in minds of Congress.

Law as Equilibrium

Rent-Seeking

Review

- i. Current approach to ambiguous text:
 - a. Start with the text (maybe using dictionaries to define terms; past English usage > current developing usage)
 - b. Look for statute-context (structure/word usage) to define terms internally
 - c. When the plain meaning is iffy, many courts will examine a statute's background to see how a typical legislator would've read it.

Doctrines of Statutory Interpretation

Use the legislative history/canons to confirm or deny textual arguments if there is ambiguity.

Textual Canons

1. Ordinary Meaning

- 1. Assume the legislature uses words in their ordinary sense
 - a. What would the words convey to the ordinary or reasonable reader?
 - b. Rely on linguistic experience, not literal meaning
 - c. Prototypical Meaning: What is the core idea behind a word/phrase?

2. Technical Meaning:

- a. In addition to words that historically have special meaning, words that have meanings limited to parlance in trade, academic discipline, or technical area will be assumed to have that meaning when a statute deals with a related topic unless it would lead to an absurd result.

3. Accumulated Meaning:

- a. Where Congress uses terms that have accumulated settled meaning under either equity or common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.

4. Noscitur a Sociis

- 1. When 2 or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word.

5. Ejusdem Generis

- 1. Of the same kind, class or nature; Where general words follow specific words in a statute, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding/following specific words.
 - a. Note: judgment call about what you want to call similar

6. Expressio Unis est exclusio alterius

- 1. The expression of one thing indicates the exclusion of the other

- a. Argue it should apply strongest when there is a deviation from the normative baseline of behavior/class that would be expected.

7. Punctuation Rules:

- 1. Punctuation is less than desirable; a last ditch effort at interpretation

8. Referential & Qualifying Words

- 1. Referential & qualifying words apply only to the last antecedent, unless contrary to the apparent legislative intent derived from a sense of the entire enactment
 - a. *Jama v. Immigration & Customs Enforcement*
 - i. “the limitation of an action will not extend beyond 6 years of the act or omission of alleged malpractice by a non-discovery thereof.”
 - 1. Thereof refers to “act ... discovery”
 - b. A proviso applies only to the proviso, provision or word immediately preceding it.
 - i. *Barnhart v. Thomas*: if “physical or mental impairment are of such severity that he is not only unable to do his previous job but cannot, considering his age, education, etc. engage in any other kind of gainful employment which exists in the national economy..”
 - 1. Which exists ... only modifies “other kind of”, not “previous job.
 - c. Exception to last antecedent rule: evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that its separated from the antecedents by a comma
 - i. Insert comma before “exists in ...”
 - d. Exception: Can ignore/negate the rule when it creates a tension with existing laws.

9. And/Or Rule

10. Mandatory v. Discretionary Language

- 1. Where a court uses mandatory language (shall), the courts read it to exclude discretion to take account of equitable/policy factors

11. Singular v. Plural/ Male v. Female Pronouns

- 1. Unless the context indicates otherwise, words imparting the singular include and apply to several persons, and vice versa.
- 2. Pronouns make no difference.

12. The Golden Rule

- 1. An interpreter should adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that leads to a manifest absurdity or repugnance in which case the language may be modified, so as to avoid such inconvenience, but no further.
 - ii. Courts should be willing to revise scrivener’s errors – obvious mistakes in the transcription of statutes into law books.

13. Nietzsche Rule

- 1. Be humble in reading a statute and consider how other people use language. Be helpful to the project rather than hypertechnical.

14. The Whole Act Rule

1. Any attempt to segregate or exclude any portion from consideration would skew legislative intent.
2. A provision that seems ambiguous in isolation is often clarified by the remainder of the statutory text because the same terminology is used elsewhere in a context that makes the meaning clear, or because only one of the permissible meanings produces a substantive effect compatible with the rest of the scheme.

15. Titles:

1. A title cannot control the plain words of a statute, but in the case of ambiguity the court may consider the title to resolve uncertainty in the body of the act or for correction of obvious errors.

16. Preambles & Provisos

1. Preamble cannot control the enacting part of the statute where the enacting part is expressed in clear, unambiguous terms, but may be resorted to to help discover the intention of the law maker.
 - a. *Rambuck v. Rambuck*: looked to the preamble to find statute's purposes & answer the question at hand in accord with purpose.
 - b. *Sutton v. United Airlines*: ADA prevents discrimination against disabilities. [] claims eye glass wearers are covered, but the preamble estimates 4.3m covered, over 15m people with glasses.
2. Provisos: restrict the effect of statutory provisions or create exceptions to general statutory rules.
 - a. If there is any question about a proviso, the court should narrowly construe it.

17. Rule to Avoid Redundancies

1. No provision should be construed to be entirely redundant, aka reject interpretations leaving words without effect.

18. Presumption of Consistent Usage

1. When a statutory word has been used in other statutes dealing with the same subject matter, and has a settled meaning in those statutes, interpreters will presumptively follow the settled meaning.

19. Meaningful Variation

1. A change of wording within a statute denotes a change of meaning.
 - a. Less relevant when the individual statutes are enacted at different times
 - b. If you change a term during re-enactment, the rule comes into effect again.

20. Hybrid Canon:

1. Where Congress included particular language in one section, but omits it from another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

21. Rule Against Interpreting a Provision in Derogation of Another

1. One provision of a statute should not be interpreted in such a way as to derogate from other provisions.
2. Ways to derogate:
 - a. Operational conflict – an interpretation of P1's operation conflicts with that of P2.
 - b. Philosophical Tension – as interpreted, P1 is in tension with an assumption of P2.
 - c. Structural Derogation – P1's interpretation may be at odds with the overall structure of the statute.

Substantive Canons: General

1. Strictly construe statutes in derogation of Sovereignty
 1. if a statute is written in general language, it is presumed that it only applies to private parties – government and its agencies are presumed not included unless there is specific language to the contrary.
2. Strict Construction of Public Grants
 2. Public grants by the government to private individuals are construed in favor of the government
3. Strict Construction of (Some) Revenue Statutes
 3. Tax laws are to be strictly construed against the state and in favor of the tax payer where there is any doubt.
4. The basic police powers of the States cannot be superceded by Congress without a clear & manifest purpose to do so.
5. Clear Statement Rules
 4. Presumptions that can only be rebutted by clear statutory language.

Substantive Canons: Lenity

1. Laws whose purpose is to punish (fine or imprisonment) must be construed strictly.
 - a. Construe in favor of the Δ when the language doesn't clearly outlaw the conduct
 - b. Based on fair notice.
 - c. More likely to apply to "good guys"
2. Rule of Lenity Should only applied: *Yablon Article*
 - a. To avoid criminalizing ordinary daily conduct
 - b. Prevent prosecutors from exercising excess discretion
3. Severability

- a. When you find part of a statute unconstitutional, some courts will strike the provision & enforce the rest.

Substantive Canons: Constitutional Avoidance

1. An act of Congress ought not be construed to violate the Constitution if any other possible construction remains available. *NLRB v. Catholic Bishops*

Substantive Canons: Clear Statement Rule

1. The court should not interpret a statute as allowing the federal government to encroach on state's rights unless there is an unmistakably clear statement in the language of the statute.

Llewellyn

1. The canons are not dead. State courts are more likely to use the canons to frame the issue but not ultimately decide the case.
 - a. If the thrust gets you nowhere or to an absurd result, use the parry to carry you through.

Extrinsic Sources of Statutory Interpretation

1. Traditional Rule denies external sources if there's a plain meaning
2. New Textualists use CL & other statutes, but not legislative history.

<u>Extrinsic Sources:</u>	<u>v.</u>	<u>Criteria</u>
*Other Statutes		Intent
*Common Law		Purpose
*Legislative History		Text
*Post Enactment Legislative Behavior		
*Canons		
*Agency Interpretations		

Common Law Background

1. Assumption: Through careful consideration and reason, people tend to congregate around the right answers over time.
2. Use CL to:
 - a. Gap-Filling:

- i. When incorporating the CL into the analysis it is best used with an old, brief statute.
- b. Default Rules that Congress can write around
- c. Dual Role of Intent
 - i. Specific Intent to include the CL in legislation
 - ii. Legislature knew of CL process & continued to use it intending courts to mold the statute to the CL.
- 3. When there is a split in the jurisdictions that means that there was no settled meaning in the CL when the statute was enacted thus its illegitimate to use the CL. *Smith v. Wade*

Legislative History

- 1. Use Legislative History when:
 - a. Reliable
 - b. Relevant to the Question
 - c. Available
- 2. Legislative History v. Statutes
 - a. If both the statute & LH are unclear, then a purposivist will let you use any evidence to resolve the ambiguity.
 - b. If the statute is clear & LH ambiguous, then use the text
 - c. If the statute is unclear and the LH is clear, then the LH might be helpful to resolve the ambiguity but LH could be what the legislators couldn't agree on in the vote.
 - d. Clarity is Relative
- 3. When LH is most helpful – Brudney Article
 - a. LH is more valuable when textual ambiguity stems from lack of foresight, rather than lack of consensus
 - b. Omnibus bills present an incomprehensible mess of LH
 - c. Severely discount the benefit of LH when an agency interpretation exists
 - d. If the scheme is highly detailed, assume the technicalities in the text are relevant, the technicalities in LH lack consensus
- A. Background Circumstances of Legislation*
 - 1. Lawyers & judges are not historians, but they try to use actual history to frame the bargain struck in the past to decide the issue today.
 - a. Textualists sign on b/c historians don't skew history to suit future legislation
- B. Committee Reports
 - 1. Best example plain meaning & most reliable source of legislative history.

Pros of Using Committee Reports	Cons of Using Committee Reports
<ul style="list-style-type: none"> -Drafted by people who thought about the legislation. -Good statements of purpose, usually by provision. - Systemic Accountability: drafter is responsible to the legislator. <ul style="list-style-type: none"> -Lobbyist influence is minimized. -Assume judges are competent to determine bad LH. 	<ul style="list-style-type: none"> -Text may not be subject to the same qualified language. -Legislatures don't actually write the CRs -Text is not voted on or subject to amendment. -Can be skewed by committee politics. -Judges are not competent to determine valid LH & such use would be costly.

2. Use a sliding scale of Committee Reports & Legislative History
 - a. Use your judgment, CR can inform statutory meaning, but don't rely on it as law.
3. Becomes a dangerous source when not available for floor debates.

C. Sponsor Statements

1. Highest quality of individual statement.
 - a. Derives their accountability to other Congressmen who count on their opinions to form their own voting preference.
2. Usually the last type of legislative history used.
3. Acquiescence in the stated intent of a sponsor or committee chair will likely be relied on absent reliable evidence of contrary intent. *Pepper v. Hart*
4. Beware of planned colloquies.

D. Legislative Deliberation

*Of most value when they appear later in the process & are directly on point.

1. Committee Hearings & Floor Debates
 - a. Usually of little value except, perhaps, for confirmatory purposes
 - b. Counter: Hearings
 - i. Since proposed legislation is drafted by executive committees and lobbyists, hearings might be the only truly informed explanations of structure and operation.
 - c. Counter: Floor Debates
 - i. Exchanges b/w support & opposition help sharpen the deals reached

2. Floor Debates

3. Rejected Proposals & Amendments *Rapanos*

a. Approaches:

- i. Scalia: Rejection means nothing; Vetogates are often an issue in Congress not support.
 - ii. Of most value when the proposal is actually debated & still rejected.
- b. Absent overwhelming evidence of acquiescence, the court should be loath to replace the plain text and original understanding of a statute with an amended agency interpretation. *Rapanos*
- c. Interpreters should be reluctant to read statutes broadly when a committee, chamber, or conference committee rejected language supporting a broad reading. *FDA v. Brown & Williamson Tobacco Corp.*

4. Dog that Didn't Bark

- a. If no legislator notes that an important policy is being changed, a court should presume that no big changes are intended.
- b. Scalia: Text is a bark; not mentioning something doesn't mean there wasn't a common understanding or you're looking at the wrong legislative history.

Post Enactment Legislative Behavior

1. Insert things into the record with a notational dot.
2. Legislative history of a subsequent statute interprets the application of the prior statute. *Montana Wilderness.*
3. Presidential Signing Statements
 - a. States the broad purposes of the legislation at signing; or
 - b. States that he plans to apply it narrowly to avoid a potential constitutional issue he sees.
 - c. Part of an intent inquiry b/c the president is part of the majority unless Congress enjoys a super majority.
 - d. No opportunity to respond to his statements presents an issue.

A. Legislative Inaction

1. Dog That Didn't Bark

- a. If no legislator notes that an important policy is being changed, a court should presume that no big changes are intended.

2. Canon of Continuity
 - a. In the absence of clear intentions to the contrary, statutes should be construed as to maintain established rules & practices.
3. Acquiescence Rule
 - a. If Congress is aware of an authoritative agency or judicial interpretation of a statute, and doesn't amend the statute, the Court sometimes presumes that Congress has "acquiesced" in the interpretation's correctness.
 - i. Textualist: Acquiescence is abhorrent absent overwhelming evidence.
 - ii. Invoke if there is concrete evidence of awareness & paid attention to it.
4. Re-Enactment Rule
 - a. If Congress re-enacts a statute without making any material changes in its wording, the Court will often presume that Congress intends to incorporate authoritative agency and judicial interpretations of that language into the re-enacted statute.
 - i. Interpretation should be:
 1. Authoritative: SCOTUS or Decision of a chief agency enforcing the law.
 2. Settled interpretation
 3. Interpretation is likely to have yielded public & private reliance.
 - b. Reliable b/c you can eliminate the Vetogates problem if Congress is one body over time.
5. Rejected Proposal Rule
 - a. If Congress (in a conference committee) or one chamber (in floor debates) considers and rejects specific statutory language, the Court has often been reluctant to interpret the statute along lines of the rejected language.
6. Attribute significance to the failure of Congress to act when: *Bob Jones*
 - a. Congress has been aware of the judicial or agency interpretation for a significant period of time.
 - b. Adherents to the opposing argument have been heard on the subject for a significant duration of time.
 - c. Congress was constantly reminded of the issue in interpretation when enacting subsequent legislation on similar topics.
7. Reasons Legislation doesn't get passed
 - a. Information problems: the interpretation is not well known
 - b. Actual acquiescence
 - c. Not enough time in the legislative calendar
 - d. Other priorities in Congress – Vetogates stop even popular legislation

B. Other Statutes

- Limits on Reasoning from similar Statutes
 - o There may be more than one statute in pari materia which have been interpreted differently.
 - o The newly adopted statute might embody policies or compromises subtly different than those in the similar statute.
 - o Such reasoning may undermine deliberative legislative compromises – exceptions in one place mean legislature was capable of inserting them elsewhere.

1. In Pari Materia

- a. Statutes in pari materia will be similarly construed.
- b. Frequently used by textualists to read the best answer out of the text.
- c. Other statutes within the jurisdiction might use the same terminology or address the same issue as the statute being interpreted.
- d. Argue for similarities among the statutes, or relevant differences in policy, goal, etc.

2. Borrowed or Modeled Statutes

- a. Another statute might have been the template from which the statute at issue was designed.

Modeled Statutes - Lorillard

- a. Reliability of Modeled Statutes: Intent – we assume there is a settled meaning if the legislature didn't change the meaning.
- b. When legislation is modeled on/incorporates provisions of existing statutes of the same jurisdiction, courts assume that the newer statute should be interpreted consistently with the prior unless there are strong indications to the contrary.
 - a. Presume knowledge of incorporated authoritative interpretations especially when: (1) detailed knowledge of the prior statutes provisions & their interpretation; and (2) a willingness to depart from or include those provisions; (3) selectivity in incorporating provisions.
- c. Are there any significant differences between the two statutes?

Borrowed Statutes – Zerbe

- a. When a statute is adopted from another jurisdiction, only the interpretations of the highest court of the other jurisdiction are presumptively incorporated by the legislature.

- b. The presumption in favor of incorporating interpretations can be rebutted by (1) poorly reasoned decisions, or (2) precedents no longer vital.

3. Rule Against Implied Repeals – *Mancari*

- a. When a specific statute is followed by a general statute, and the two appear to contradict, the court will not presume a repeal of the former without explicit language.
- b. Statutes must be from the same jurisdiction.

C. Agency Interpretations

- 1. SCOTUS grants deference to agency interpretations of statutes.

If ask for one client then use arguments for one side

Imaginative Reconstruction: Used on the border of Intentionalism and Purposivism – couched in terms of intent, but decided based on pupose.

Purpose v. Intent:

- In most cases they are the same thing.
- Definitely purposivist, some intentionalists, seek to make the law coherent over time.
- When different, purpose will be broader.
 - o Purpose is to give kids healthy meals, intent is to give kids milk.

Purpose

- Strong “& weak
 - o S: carries it far. Even when language is clear, if the purpose contradicts language then ignore the text.
 - o Go beyond text.
 - o Text is unclear, go to purpose.
- Figure out Congress’ purpose

Intent

- If willing to ignore text entirely, then purposivism.
- Statute clear & ordinary meaning confirms
- Figure out what Congress meant
 - o Legislative history, text.

Textualism

- Besyt answer from the text.
- If absurd,
- Figure out what the text means.