Black’s Law Dictionary: The Making of an American Standard*

Sarah Yates**

This article examines the history of Black’s Law Dictionary, the methods used in its creation, and its evolution. It then compares Black’s with its competitors and identifies factors both inherent in the works themselves and driven by external forces that have led to today’s primacy of Black’s over other law dictionaries.

Introduction

¶1 “Look it up in Black’s.” What law librarian hasn’t heard—and said—that sentence a thousand times? Reference librarians are expected users of Black’s Law Dictionary, but they are not alone. Black’s is an invaluable tool for catalogers assigning subject headings, particularly because catalogers are less likely than reference librarians to have a law degree.1 Most access services and circulation librarians, even if they do not have to look terms up in Black’s, are familiar with the work itself, simply from the number of requests for it.

¶2 Well-known enough that it is recognizable simply by the name of its long-deceased creator, Black’s is the most widely used law dictionary in the United States today.2 It was not the first English law dictionary, or even the first American law dictionary. Nor is it the most recently founded line of dictionaries. And yet, somehow, it has become the predominant American law dictionary.

¶3 But while law librarians frequently rely on Black’s, how much do we know about it? This article examines the history of Black’s, the methods used to create it, and its evolution. It then compares Black’s with its competitors, early and modern, and identifies factors both inherent in the works themselves and driven by external forces that have led to the primacy of Black’s over other law dictionaries.

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* © Sarah Yates, 2011. The author would like to thank Mary Rumsey for her generous support and assistance and Connie Lenz for her helpful comments.
** Foreign Law and Rare Book Cataloger, University of Minnesota Law Library, Minneapolis, Minnesota.
1. Michael J. Slinger & Rebecca M. Slinger, The Law Librarian’s Role in the Scholarly Enterprise: Historical Development of the Librarian/Research Partnership in American Law Schools, 39 J.L. & EDUC. 387, 396 n.39 (2010) (“Many law school libraries now require their reference librarians to hold both law and library degrees, although librarians who work in areas such as Technical Services and Circulation are usually not required to hold a law degree.”).
2. See infra ¶¶ 12–15.
Law Dictionaries in Historical Context

4 English law dictionaries have been around for even longer than general English dictionaries. The first dictionary of English law, John Rastell’s *Expositiones Terminorum Legum Anglorum*, was published in 1527.3 *Expositiones* was in Latin and Law French,4 with a brief preface in English.5 The second edition, published in 1530, includes parallel English translations.6

5 The first general English dictionary, in contrast, was *The Dictionary of Syr Thomas Eliot Knight*, published in 1538.7 Elyot’s dictionary was bilingual, Latin to English. Because so many early written works were in Latin,8 it is no surprise that such bilingual dictionaries were among the first dictionaries in existence.

6 The first monolingual general English dictionary was Robert Cawdrey’s *A Table Alphabeticall*, published in 1604.9 *A Table Alphabeticall* began the long tradition of “hard word” dictionaries. The makers of “hard word” dictionaries assumed that literate English speakers already understood “regular” English words, so there was no reason to include them in a monolingual English dictionary.10 In comparison, early English legal terminology can be seen as a special class of hard words and as a foreign language.11 Because by Rastell’s time there were no native speakers of

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4. When the Normans invaded England in 1066, they introduced their language—the French dialect spoken in Normandy at the time. This language is known as Anglo-Norman, a term that refers to the French language spoken in England during the period “which extends from the Conquest to the time when the two races, with their respective languages and characteristics, blended into one homogeneous nation.” Paul Studer, *The Study of Anglo-Norman* 4 (1920). The term “Law French” is sometimes used synonymously with Anglo-Norman. Other writers, however, make a clear distinction between “Law French” and “Anglo-Norman” or other terms. See, e.g., J.H. Baker, *Manual of Law French* 2–3 (2d ed. 1990) (explaining that by roughly the fifteenth century, “[t]he oral use of French in the courts became confined to the recitation of formal proceedings and certain other procedural forms, and as such continued until the eighteenth century. This lingering professional dialect, more often written than spoken, is that which is known as ‘law French.’” (footnote omitted)). For an excellent and detailed discussion of Law French, see Samuel J. Stoljar, *A Common Lawyer’s French* (pts. 1 & 2), 47 Law Libr. J. 119, 209 (1954).


10. David Micklethwait, Noah Webster and the American Dictionary 34 (2000) (“Cawdrey’s only purpose was to interpret ‘hard English words’ by the use of ‘plaine English words’; it would never have occurred to him to include an interpretation of the ‘plaine English words’ as well, because everybody knew what they meant.”).

11. Early English law was written largely in Law French and, to a lesser extent, in Latin. Baker, supra note 4, at 1 (“English lawyers continued to write their reports and professional notes in French
the language used in courts, statutes, and legal documents, it is no surprise that lawyers were among the first users to need dictionaries.

¶7 The seventeenth and eighteenth centuries saw the appearance of several English law dictionaries, notably Cowell’s Interpreter, Blount’s Nomo-Lexicon, Jacob’s New Law-Dictionary, and Cunningham’s New and Complete Law-Dictionary. All of these titles deal with English law; American lawyers and law students had to rely on these English dictionaries until 1839, when John Bouvier published his Law Dictionary.

The Changing Role of Law Dictionaries

¶8 Early law dictionaries were produced mainly for the benefit and use of law students. The titles of early editions of Rastell’s dictionary make the targeted audience clear. The full title of the 1579 edition, for example, is An Exposition of Certaine Difficult and Obscure Wordes, and Termes of the Lawes of this Realme, Newly Set Foorth & Augmented, Both in French and English, for the Helpe of Such Yonge Studentes as Are Desirous to Attaine the Knowledge of the Same. VVhereunto Are also Added the Olde Tenures.

¶9 By the late eighteenth century, the focus had changed slightly. Law dictionaries were still aimed at students of law, but in the broader sense of the word students that also encompassed the self-taught. It was perhaps with this new group of users

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12. STUDER, supra note 4, at 12 (“Anglo-Norman was a dead language by the middle of the fourteenth century.”).
13. JOHN COWELL, THE INTERPRETER (Cambridge, John L. Gate 1607). See also Bryan A. Garner, Legal Lexicography: A View from the Front Lines, 6 GREEN BAG 2D 151, 152 (2003) (“There can be little doubt that, perhaps apart from John Cowell, Black was the most erudite lawyer ever to write a dictionary.”); Thumma & Kirchmeier, supra note 5, at 239 (calling Cowell’s dictionary “more scholarly” than Rastell’s).
16. CUNNINGHAM, supra note 15. See also Garner, supra note 15, at 367 (“His [Cunningham’s] efforts produced the most copious of 18th-century law dictionaries—an attempt to restate the whole of the law and to arrange it alphabetically. . . . In calling his work an ‘abridgment,’ Cunningham was following a tradition begun in the 15th century of trying to restate the whole of English law in a single text . . . Only one other writer, Giles Jacob (1686–1744), had ever taken this approach. The result (for both Cunningham and Jacob) was more of an encyclopedia than a dictionary in the modern sense.”).
18. Two V’s were often used as a substitute for W in early English printing. See DESCRIPTIVE CATALOGING OF RARE MATERIALS (BOOKS) 192 (2007).
in mind that dictionary makers began to include much more than just definitions of legal terms.

Jacob’s dictionary, and Cunningham’s, and others of the genre reflected the decline of the Inns of Court as a sophisticated school for barristers, the scarcity and expense of law books, and the growth of a large, uneducated, undisciplined mass of attorneys. This dictionary is a quick substitute for a legal education.¹⁹

¶10 The author of the first American law dictionary, John Bouvier, begins the preface to his work: “To the difficulties which the author experienced on his admission to the bar, the present publication is to be attributed,”²⁰ indicating that he, too, had law students in mind. Black’s preface to his first edition, coming more than fifty years later, indicates a somewhat wider intended audience: “the working lawyer and judge, as well as . . . the student of legal history or comparative jurisprudence.”²¹

¶11 The use of dictionaries by the courts, and specifically by the U.S. Supreme Court, was already on the rise in the late nineteenth century when Black offered his dictionary to “the working lawyer and judge.”²² Yet even if Black was aware of this trend, it is unlikely that he could have foreseen the exponential increase in dictionary use by the Court in the century to come. After a brief decline in the first two decades of the twentieth century, dictionary use began to climb slowly through the 1960s, then rapidly from the 1970s onward.²³ “From 1990 through the 1997–1998 term, the Court cited dictionaries in nearly 180 opinions to define more than 220 terms.”²⁴ While a detailed analysis of the Court’s use of dictionaries since 1998 is beyond the scope of this article, Westlaw searches for two of the most-cited dictionaries²⁵ from 1999 to the present show no reversal of the overall trend: seventy-three decisions cite Webster’s Third New International Dictionary,²⁶ and 103 cite Black’s.²⁷ The reliance of the U.S. Supreme Court on dictionaries has not gone unnoticed or uncriticized,²⁸ but regardless of whether such use is advisable, the

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²⁰. Bouvier, supra note 17, reprinted in 1 BOUVIER’S LAW DICTIONARY AND CONCISE ENCYCLOPEDIA, at vii (Francis Rawle ed., 8th ed. 1914) [hereinafter BOUVIER’S LAW DICTIONARY].
²¹. Black, supra note 14, at iii.
²². Thumma & Kirchmeier, supra note 5, at 248–49 (“Although the Court relied on dictionaries only three times prior to 1864, in the 1860s, the Court cited dictionaries in seven opinions in the course of defining nine terms. In the 1870s, the Court cited dictionaries in ten opinions to define thirteen terms, while in the 1880s, the Court cited dictionaries in seven opinions to define eleven terms.” (footnotes omitted)).
²³. Id. at 250–52.
²⁴. Id. at 256.
²⁵. See Lawrence Solan, When Judges Use the Dictionary, 68 Am. Speech 50, 51 (1993) (naming Webster’s Third New International Dictionary as the most frequently cited contemporary American general dictionary and Black’s as the most-cited technical dictionary).
²⁶. The following search was performed in Westlaw’s SCT database on Sept. 7, 2010: “webster’s third” /s “international dictionary” & da(> 1998).
²⁷. The following search was performed in Westlaw’s SCT database on Aug. 16, 2010: black /s dictionary & da(> 1998).
pervasiveness of these citations makes a basic understanding of the “standard” American law dictionary important for anyone doing legal research.

**Black’s Law Dictionary as the American Standard**

Every subject has its seminal reference book—the one that becomes a household word. . . . [W]henever somebody thinks of law dictionaries, Black’s seems inevitably to come to mind.29

¶12 If anyone had a selfish reason to overstate the position of Black’s, it would be the author of this statement, Bryan A. Garner. Garner began overhauling Black’s with a pocket edition in 199630 and has been editor-in-chief since. But here Garner is not engaged in self-promotion; he is simply stating a widely accepted fact.

¶13 Henry Campbell Black first published A Dictionary of Law in 1891. By that date, Bouvier’s Law Dictionary was already in its fourteenth edition and was widely considered the predominant law dictionary until well into the twentieth century.31 But while it is difficult to find credible scholarly sources claiming the continuing superiority of Bouvier’s,32 references to Black’s Law Dictionary as the current standard abound.33

¶14 The Supreme Court’s use of law dictionaries supports scholars’ views. In a 1996 LexisNexis search comparing the number of Supreme Court citations of Bouvier’s with those of Black’s, Mary Whisner found that Bouvier’s was cited more frequently through the 1930s and that the two dictionaries were cited with equal frequency in the 1940s and 1950s. Since then, the Court has shown an increasing preference for Black’s.34 Whisner’s search was not a formal study, but her conclusions are supported by a detailed analysis of dictionary use in the Supreme Court.

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30. BLACK’S LAW DICTIONARY, supra note 29.
31. See, e.g., MORRIS L. COHEN ET AL., HOW TO FIND THE LAW 412 (9th ed. 1989) (“For almost a hundred years, the numerous editions of John Bouvier’s A Law Dictionary were most popular among American lawyers.” (footnote omitted)); J.G. MARVIN, LEGAL BIBLIOGRAPHY, OR A THESAURUS OF AMERICAN, ENGLISH, IRISH, AND SCOTCH LAW BOOKS 138 (Philadelphia, T. & J.W. Johnson 1847) (calling the second edition of Bouvier’s “the best book of the kind in use for the American lawyer”); ISADORE GILBERT MUDGE, GUIDE TO REFERENCE BOOKS 130 (6th ed. 1936) (calling the 1914 edition of Bouvier’s the “standard American law dictionary”). Mudge provides bibliographic information for Black’s but makes no comment on it.
33. See, e.g., STEVEN M. BARKAN ET AL., FUNDAMENTALS OF LEGAL RESEARCH 405 (9th ed. 2009); Thumma & Kirchmeier, supra note 5, at 241 (“Although there are other American law dictionaries, Black’s Law Dictionary, and to a lesser extent Ballentine’s Law Dictionary, are now the dominant American law dictionaries.” (footnotes omitted)); Roy M. Mersky & Jeanne Price, The Dictionary and the Man: The Eighth Edition of Black’s Law Dictionary, Edited by Bryan Garner, 63 WASH. & LEE L. REV. 719, 729 (2006). Mersky was involved with the revision of Black’s; he and his colleagues at the Tarlton Law Library at the University of Texas are acknowledged for their assistance in the preface to the seventh edition. Bryan A. Garner, Preface to BLACK’S LAW DICTIONARY, at xiv–xv (7th ed. 1999).
34. Whisner, supra note 32, at 100, ¶ 6.
through the 1997–1998 session, which found 107 citations to just the fifth and sixth editions of Black’s, compared to only thirty-six citations to all editions of Bouvier’s.35 This trend toward Black’s has in no way reversed since the 1990s; another informal database search, this time performed in Westlaw in 2010, shows 103 cases since 1998 with at least one citation to Black’s36 and only three cases in that time span with at least one citation to Bouvier’s.37

¶15 What do we know about the man who challenged and (eventually, posthumously) surpassed the country’s first and long-time top law dictionary? Not very much.

Henry Campbell Black and His Lexicographic Approach

I wish we knew nothing of Carlyle but his writings; I am thankful we know so little of Chaucer & Shakspere . . . I have persistently refused to answer the whole buzzing swarm of biographers, saying simply “I am a nobody—if you have anything to say about the Dictionary, there it is at your will—but treat me as a solar myth, or an echo, or an irrational quantity, or ignore me altogether.”38

¶16 This quotation is by one of the most famous lexicographers of the English language, James A.H. Murray, editor of A New English Dictionary on Historical Principles—a work better known now as the first edition of The Oxford English Dictionary. Scholars actually do know a lot about Murray; in fact, the anti-biography quotation comes from his own papers, and is included in the prologue to a biography of Murray written by his granddaughter.39 The sentiment expressed might apply even more appropriately to Henry Campbell Black, about whom no biography has been written. Or it might not. Black’s thoughts on himself as lexicographer remain unknown.

¶17 A mere outline of the life of Henry Campbell Black is all that is now available. The title page to his 1891 Dictionary of Law gives him as “Henry Campbell Black, M.A. Author of Treatises on ‘Judgments,’ ‘Tax-Titles,’ ‘Constitutional Prohibitions,’ etc.”40 By the second edition, he is “Henry Campbell Black, M.A.: author of treatises on judgments, tax titles, intoxicating liquors, bankruptcy, mortgages, constitutional law, interpretation of laws, etc.”41

35. Thumma & Kirchmeier, supra note 5, at 263.
36. See the search described supra note 27.
37. The following search was performed in Westlaw’s SCT database on Aug. 16, 2010: bouvier /s dictionary & da (> 1998).
39. Elisabeth Murray follows these excerpts with the assurance that “[h]e did, however, in later life reveal that he had always intended to write out a narrative of his life and memories when he had completed the Dictionary and leave it to his family ‘to suppress or publish it, or such parts of it, as their wisdom should choose.’” Id. (quoting draft of letter from James A.H. Murray to Sir Herbert Warren (Jan. 19, 1911)). One of James Murray’s sons also wrote a biography of his father. Wilfrid G.R. Murray, Murray the Dictionary-Maker (1943).
40. Black, supra note 14, at i.
Black was born in 1860 in Ossining, New York. He received an A.B. in 1880, an A.M. in 1887, and an LL.D. in 1916, all from Trinity College in Hartford, Connecticut. He was admitted to the bar in 1883 and practiced law in Williamsport, Pennsylvania, and Saint Paul, Minnesota, before devoting himself full-time to legal writing and editing. Black was the author of more than a dozen books on constitutional law, tax law, bankruptcy law, and other legal topics; additionally, he served as editor of *The Constitutional Review* from its first issue in 1917 until his death in 1927.

Information on Black’s aims and methodology for compiling the law dictionary is only slightly less sketchy. The most direct source is the dictionary itself. Like many books published in the nineteenth century, the first edition had a lengthy and descriptive title: *A Dictionary of Law Containing the Terms and Phrases of American and English Jurisprudence, Ancient and Modern Including the Principal Terms of International, Constitutional, and Commercial Law; With a Collection of Legal Maxims and Numerous Select Titles from the Civil Law and Other Foreign Systems*. The title of the second edition—the only revision to the dictionary that Black himself undertook—is even longer and indicates a broader scope: *A Law Dictionary Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern and Including the Principal Terms of International, Constitutional, Ecclesiastical and Commercial Law, and Medical Jurisprudence, with a Collection of Legal Maxims, Numerous Select Titles from the Roman, Modern Civil, Scotch, French, Spanish, and Mexican Law, and Other Foreign Systems, and a Table of Abbreviations*. The subtitles clearly spell out Black’s intent.

Black further describes the intended scope of the dictionary in his preface:

> The dictionary now offered to the profession is the result of the author’s endeavor to prepare a concise and yet comprehensive book of definitions of the terms, phrases, and maxims used in American and English law and necessary to be understood by the working lawyer and judge, as well as those important to the student of legal history or comparative jurisprudence.

He then proceeds to detail what his dictionary is not: a compilation of the law, a textbook, an encyclopedia, or a general English dictionary, “although vernacular words and phrases, so far as construed by the courts, are not excluded from its pages.” Black elaborates on what types of “vernacular” words he has included: those “which, in consequence of their interpretation by the courts or in statutes, have acquired a quasi-technical meaning, or which, being frequently used in laws or private documents, have often been referred to the courts for construction.”

Above all, Black intended for the *Dictionary of Law* to contain a comprehensive collection of legal terminology for an Anglo-American audience. He states...
that a law dictionary’s “value is impaired if any single word that may reasonably be sought between its covers is not found there.”48 and asserts that his law dictionary is the most comprehensive in existence at the time:

Of the most esteemed law dictionaries now in use, each will be found to contain a very considerable number of words not defined in any other. None is quite comprehensive in itself. The author has made it his aim to include all these terms and phrases here, together with some not elsewhere defined.49

¶22 The closest Black comes to defining his methodology is in his listing of the sources for definitions. While he used a variety of sources, his greatest emphasis was on primary legal materials. Definitions given within statutes and codes are given top priority; Black notes that “[t]he definitions thus enacted by law are for the most part terse, practical, and of course authoritative.”50 Here Black implies, but does not state explicitly, that these statutory definitions are given verbatim in the dictionary.

¶23 As one might expect for a legal dictionary of common law jurisdictions, “[d]ue prominence has also been given to definitions formulated by the appellate courts and embodied in the reports.”51 Black is explicit that

[m]any of these judicial definitions have been literally copied and adopted as the author’s definition of the particular term, of course with a proper reference. But as the constant aim has been to present a definition at once concise, comprehensive, accurate, and lucid, he has not felt bound to copy the language of the courts in any instance where, in his judgment, a better definition could be found in treatises of acknowledged authority, or could be framed by adaptation or re-arrangement.52

¶24 A bit further down the page, Black mentions several additional sources, many by name.53 These include English law dictionaries, both contemporaneous54 and early,55 dictionaries56 and other works of Roman and civil law;57 dictionaries of58 and treatises on59 French, Spanish, and Scotch law; “sages of the early [English] law”,60 and “the institutional writings of Blackstone, Kent, and Bouvier, and a very

48. Id.
49. Id.
50. Id.
51. Id.
52. Id. at iii–iv.
53. Presumably some of the named sources are the “treatises of acknowledged authority” he notes above. Id. at iv.
55. Id. (Cowell, Spelman, Blount, Jacob, Cunningham, Whishaw, Skene, Tomlins, and Termes de la Ley).
56. Id. (Calvinus, Scheller, Vicat, Brown, and Burrill).
57. Id. (Mackelday, Hunter, Browne, Hallifax, Wolff, Maine, and especially Gaius and Corpus Juris Civilis).
58. Id. (Dalloz, Bell, and Escriche). In addition to the dictionaries already specified, a “Bibliographical List of the Principal Law Dictionaries in English and Foreign Languages” is given. Id. at vii–x.
59. Id. (Pothier, Merlin, Toullier, Schmidt, Argles, Hall, White, and others).
60. Id. (Bracton, Littleton, Coke, and others).
great number of text-books on special topics of the law.”  

Furthermore, Black states that he has written many definitions “entirely de novo.” Whatever else we know about Black’s methods must be inferred from the dictionary itself.

§25 Bryan Garner has probably studied Black’s Law Dictionary in more depth than anyone. In his preface to the 1996 pocket edition, he writes: “Little is known about exactly how Black and his contemporaries worked, but one thing is certain to anyone who has spent any time examining 19th-century and early-20th-century law dictionaries: a great deal of the ‘work’ was accomplished through wholesale borrowing from other dictionaries.” Black implies as much in his own preface to the first edition, and Garner notes that this was common among lexicographers of the time. Garner offers an additional possible reason for Black’s adherence to earlier lexicographers’ definitions: “[D]ictionary editors in the legal field were trained as common-law lawyers, under the Anglo-American system of precedent. As a result, they might have thought that accuracy precluded a reconsideration of their predecessors’ words—especially if the earlier dictionary-maker cited caselaw in support of a definition.”

§26 Just how much did Black copy from his predecessors’ dictionaries? An in-depth study and comparison of American law dictionaries, such as the one completed by Starns and Noyes of early general English dictionaries, would be a welcome addition to the scholarship. While such an analysis is beyond the scope of this article, it is useful to look at a few examples.

§27 Some of Black’s definitions are taken directly from his predecessors’ dictionaries, as is shown in table 1.

### Table 1

Comparison of Definitions between Black’s and Blount’s Dictionaries

<table>
<thead>
<tr>
<th></th>
<th>Black</th>
<th>Blount</th>
</tr>
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<tbody>
<tr>
<td>afforare</td>
<td>To set a price or value on a thing.</td>
<td>[T]o set a Value or Price on a Thing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[followed by usage examples in Latin]</td>
</tr>
<tr>
<td>manipulus</td>
<td>In canon law. A handkerchief, which the priest always had in his left hand.</td>
<td>[A]n Handkerchief which the Priest always had in his Left-hand.</td>
</tr>
</tbody>
</table>

61. Id. (naming no specific textbooks or textbook authors).
62. Id.
64. See BLACK, supra note 14, at iii–iv.
65. Garner, supra note 29, at iv. See also MICKLETHWAIT, supra note 10, at 35; STARNES & NOYES, supra note 9 passim (showing many examples of similar and identical definitions from different dictionaries).
67. STARNES & NOYES, supra note 9.
68. BLACK, supra note 14, at 50. Black does state “Blount” right after the definition.
69. THOMAS BLount, A LAW-DICTIONARY AND GLOSSARY, at leaf D1r (3d ed. 1717).
70. BLACK, supra note 14, at 749. Again, Blount is noted after the definition.
71. BLount, supra note 69, at leaf 3C1v.
¶28 Elsewhere, Black quotes from another dictionary directly, but the quoted text is not the whole of his definition. Consider the definition of fact. Black’s entry begins, “A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence.” This opening paragraph—the basic definition—is not attributed to any source and can be presumed to be Black’s own definition. Six more paragraphs follow, four of which end with source attributions. For example, a paragraph distinguishing fact from law is taken directly from Abbott.

This paragraph is the second in Abbott’s own seven-paragraph entry; in Black’s dictionary it comes sixth. Abbott’s basic definition of fact, that is, the first paragraph in his entry, is, “An actual occurrence; a circumstance or event; something which has been done.” Black’s definition is similar, but this is not surprising given that the definitions are for the same word.

¶29 For many definitions, Black has consulted more than one source but does not quote directly from any. For example, his entry for gemot refers to two earlier dictionaries: those of Cunningham and Wharton. Black’s basic definition is very similar, but not identical, to Wharton’s; it is significantly different from Cunningham’s—this is illustrated in table 2.

### Table 2

<table>
<thead>
<tr>
<th></th>
<th>Black</th>
<th>Cunningham</th>
<th>Wharton</th>
</tr>
</thead>
<tbody>
<tr>
<td>gemot</td>
<td>In Saxon law.75 A meeting or moot; a convention; a public assemblage.76</td>
<td>Is a Saxon word signifying conventus, an assembly.77</td>
<td>[A] mote or moot, meeting, public assembly.78</td>
</tr>
</tbody>
</table>

All three entries continue past the basic definition. Cunningham’s is the briefest; he notes that the word is “used in the laws of Edward the Confessor . . . for a court.” Black and Wharton, however, go on to list and describe various types of gemots. The full descriptions are shown in table 3.

72. Black, supra note 14, at 469.

73. 1 Benjamin Vaughan Abbott, Dictionary of Terms and Phrases Used in American or English Jurisprudence 475 (1879) (“The word is much used in phrases which contrast it with law. . . . The fact that it exists, if important to the rights of parties, must be alleged and proved, the same as the actual existence of any other institution.”).

74. Id.

75. By “Saxon,” Black and Cunningham mean Anglo-Saxon, i.e., pertaining to England before the Norman Conquest, not to Saxony in present-day Germany. The Oxford English Dictionary gives the etymology of gemot(e) as Old English. 6 Oxford English Dictionary 426 (2d ed. 1989). It also gives as one of the definitions of Saxon: “Formerly often used (like Anglo-Saxon) as the distinctive epithet of the Old English language . . . and of the period of English history between the conquest of Britain by the Saxons, Angles, and Jutes, and the Norman Conquest.” 14 id. at 540 (definition B.1.a).

76. Black, supra note 14, at 533.

77. 2 Cunningham, supra note 15, at leaf 2O2r. Cunningham spells the word gemote.


79. 2 Cunningham, supra note 15, at leaf 2O2r.
### Table 3

<table>
<thead>
<tr>
<th>Descriptions of Gemot Types in Black’s and Wharton’s Dictionaries</th>
</tr>
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<tbody>
<tr>
<td><strong>Black</strong></td>
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<tr>
<td>These were of several sorts, such as the witena-gemot, or meeting of the wise men; the folc-gemot, or general assembly of the people; the shire-gemot, or county court; the burg-gemot, or borough court; the hundred-gemot, or hundred court; the hali-gemot, or court-baron; the hal-mote, a convention of citizens in their public hall; the holy-mote, or holy court; the swein-gemot, or forest court; the ward-mote, or ward court.</td>
</tr>
<tr>
<td>1. The folc-gemot, or general assembly of the people, whether it was held in a city or town, or consisted of the whole shire. It was sometimes summoned by the ringing of the moot-bell. Its regular meetings were annual.</td>
</tr>
<tr>
<td>2. The shire-gemot, or county court, which met twice during the year.</td>
</tr>
</tbody>
</table>
| 3. The burg-gemot, which met thrice in the year. | 3. The hundred-gemot, or hundred court, which met twelve times a year in the Saxon ages; but afterwards a full, perhaps an extraordinary meeting of every hundred was ordered to be held twice a year . . . .
| 4. The hundred-gemot, or hundred court, which met twelve times a year in the Saxon ages; but afterwards a full, perhaps an extraordinary meeting of every hundred was ordered to be held twice a year . . . . | 5. The Halle-gemot, or the court baron. |

¶30 Black may have consulted Wharton’s list, but he clearly did not copy it. Whereas Wharton gives information such as how often the different gemots met, Black’s descriptions are essentially just translations of the Old English terms. Also, Black mentions the witena-gemot, hal-mote, holy-mote, and swein-gemote, all of which Wharton neglects.

¶31 Black’s use of judicial sources is similar to his use of earlier dictionaries; he “felt no compunction to mindlessly mimic the language of judicial opinions . . . . Black was not hesitant to create a definition out of whole cloth . . . .”82 His definitions are sometimes verbatim or nearly so, but more often he paraphrases, as can be seen in table 4.

¶32 As in other instances where he relied heavily on existing sources, Black combined relevant parts from different sources, as well as adding his own material. The definition from Black’s of salary, as given in table 4, is the third of three paragraphs

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80. Black, supra note 14, at 533.
81. Wharton, supra note 78, at 417.
82. Mersky & Price, supra note 33, at 732.
Comparison of Definitions from Black’s Dictionary and Court Opinions

| Salary | “Salary” signifies the periodical compensation to men in official and some other situations. The word is derived from “salarium,” which is from the word ‘sal,’ salt, that being an article in which the Roman soldiers were paid. 10 Ind. 83. |
| - | SALARIES are the per annum compensation to men in official and some other situations. The word salary is derived from salarium, which is from the word sal, salt, being an article in which the Roman soldiers were paid. See [the dictionaries of] Richardson, Webster, Bouvier and Wharton. |
| Legal interest and conventional interest | Legal interest is the rate of interest established by the law of the country, and which will prevail in the absence of express stipulation; conventional interest is a certain rate agreed upon by the parties. |
| - | By the Spanish law there is established two kinds of interest; first, legal interest, which is the rate fixed by law, and attaching to contracts where the parties have not agreed upon a rate; and second, conventional, or customary interest; which is the rate general and usual by custom, at a given time, in a given place; and which may be greater or less than legal interest. |

for the entry. The first paragraph credits Cowell, and the second is unattributed and presumably Black’s own. Likewise, Black’s comparison between legal interest and conventional interest is just one paragraph in a longer entry on interest, and Fowler v. Smith is just one of several sources cited throughout the entry; others include cases from other states, treatises, and the California civil code.

What Set Black’s Apart from the Rest?

Black’s dictionary arrived on a very different scene than Bouvier’s had fifty-two years earlier; John Bouvier was a pioneer who paved the way for Black and other American legal lexicographers. While English-language law dictionaries existed at the time, they were published in England, sometimes with editions also published in Scotland or Ireland. Bouvier cites this as a prime motivating factor for his entrance into the field of legal lexicography:

83. Black, supra note 14, at 1059.
84. Cowdin v. Huff, 10 Ind. 83, 85 (1858).
85. Black, supra note 14, at 636.
86. Fowler v. Smith, 2 Cal. 568, 570 (1852).
87. Black, supra note 14, at 1059. “Cowell” refers to Cowell, supra note 13. Black’s “Bibliographical List of the Principal Law Dictionaries” gives a first edition, dated 1607; a second, dated 1672; and a third, dated 1708. Black, supra note 14, at viii. The citation does not specify which edition was consulted. Id. at 1059.
88. Black, supra note 14, at 636.
89. Some of the dictionaries were also published in later, “American” editions, although these still pertained to British law. See, e.g., Giles Jacob, The Law-Dictionary (T.E. Tomlins ed., New
They were written for a different country, possessing laws different from our own, and it became a question how far they were or were not applicable here. Besides, most of the matter in the English law dictionaries will be found to have been written while the feudal law was in its full vigor, and not fitted to the present times, nor calculated for present use, even in England. And there is a great portion which, though useful to an English lawyer, is almost useless to the American student. “What, for example, have we to do with those laws of Great Britain which relate to the person of their king, their nobility, their clergy, their navy, their army; with their game laws; their local statutes, such as regulate their banks, their canals, their exchequer, their marriages, their births, their burials, their beer and ale houses, and a variety of similar subjects?”

§34 Nor was Black the first American jurist to follow Bouvier’s example. “He entered a crowded field, for there were many law dictionaries then in print—several more major ones, in fact, than there are now.” Black mentions seven titles published in the United States between 1839 and 1891 as being among the “principal law dictionaries.”

§35 This raises several questions: Why did Black even think a new law dictionary was necessary? Why did he think he was the man for the job? How did Bouvier’s dictionary fall from its place as the standard American law dictionary? Why was it Black’s dictionary and not a competitor that became the standard? Black offers a few clues about his motivation in the preface to the first edition. The most explicit is his claim that his dictionary is comprehensive, unlike any other law dictionary available at the time.

§36 While Black’s was an American law dictionary, his scope was broader than just American law:

For the convenience of those who desire to study the law in its historical development, as well as in its relations to political and social philosophy, place has been found for numerous titles of the old English law, and words used in old European and feudal law, and for the principal terminology of the Roman law. And in view of the modern interest in comparative jurisprudence and similar studies, it has seemed necessary to introduce a considerable vocabulary from the civil, canon, French, Spanish, Scotch, and Mexican law and other foreign systems.


90. BOUVIER, supra note 20, at viii.
91. Garner, supra note 29, at iii.
92. Black, supra note 14, at vii–x. The seven titles mentioned are ABBOTT, supra note 73; HENRY C. ADAMS, A JURIDICAL GLOSSARY (Albany, N.Y., Weed, Parsons & Co. 1886); WILLIAM C. ANDERSON, A DICTIONARY OF LAW (Chicago, T.H. Flood & Co. 1889); ALEXANDER M. BURRILL, A NEW LAW DICTIONARY AND GLOSSARY (New York, John S. Voorhies 1850); STEWART RAPALJE & ROBERT L. LAWRENCE, A DICTIONARY OF AMERICAN AND ENGLISH LAW (Jersey City, N.J., F.D. Linn & Co. 1883); F.J. STIMSON, GLOSSARY OF TECHNICAL TERMS, PHRASES, AND MAXIMS OF THE COMMON LAW (Boston, Little, Brown 1881); and CHARLES H. WINFIELD, ADJUDGED WORDS AND PHRASES (Jersey City, N.J., J.J. Griffiths 1882). This list does not include later editions of works first published before 1839, nor does it include law dictionaries of limited scope.
93. Black, supra note 14, at iii.
94. Id.
Black goes on to note the inclusion of vocabulary of several specialized areas of law, such as “the principal phraseology of international and maritime law and forensic medicine.”

¶37 Some of Black’s other remarks in the preface seem as if they might have been written with Bouvier’s dictionary in mind, although it is not mentioned specifically. He writes that his dictionary “does not purport to be an epitome or compilation of the body of the law. . . . Neither is the book encyclopaedic in its character.”

¶38 As Garner’s phrasing of the question suggests, there is a continuum between a “pure” dictionary and a “pure” encyclopedia. The earliest law dictionaries were little more than “glossaries, with short explanations of legal terms,” as such, they were not encyclopedic at all. But starting with Giles Jacob and the publication in 1729 of his Law-Dictionary, which purports as part of its extensive subtitle to contain “also the whole law,” law dictionaries became increasingly encyclopedic.

¶39 John Bouvier wanted to reverse this trend, criticizing the encyclopedic nature of existing law dictionaries: “It is true such works contain a great mass of information, but, from the manner in which they have been compiled, they sometimes embarrassed [the author] more than if he had not consulted them.”

¶40 However, Bouvier died forty years before Black published his first edition, and “[t]he later editions of Bouvier rejected his concise approach and moved once again more toward an overdeveloped encyclopedic treatment.” Law professor and plain-English advocate David Mellinkoff calls the Bouvier’s edition he used in law school “swollen . . . . It added entries that the live John Bouvier had deliberately omitted.”

95. Id.
96. Id.
98. Id.
99. Id.; Mellinkoff, supra note 19, at 430. See also M.D. Chalmers, Wanted—A Law Dictionary, 8 L.Q. Rev. 283, 283 (1892) (“Wharton’s Law Lexicon is a work of great learning and research—but it is not a dictionary. It is an imperfectly developed encyclopedia.”). Chalmers’s paper was originally read at the Oxford Law Club in 1892—a year after the publication of Black’s dictionary—but Chalmers makes no mention of Black’s. The slight might not have been intentional, however. Perhaps Chalmers was not interested in an American dictionary, or perhaps Black’s was not yet available in England.
100. BOUVIER, supra note 20, at vii. But see Mellinkoff, supra note 19, at 430 (contending that, while Bouvier “omitted much of the old excess in the English law dictionaries,” he never fully succeeded in breaking with the encyclopedic tradition of law dictionaries: “[L]ike Jacob and Cunningham, Bouvier was writing not so much a dictionary of legal language as a short encyclopedia, but designed for use in America. Like the English dictionaries, Bouvier’s dictionary was offering a legal education.”).
102. Mellinkoff, supra note 19, at 434.
§41 The encyclopedic nature of Bouvier’s became explicit in 1914, when Francis Rawle offered up a third revision with the title *Bouvier’s Law Dictionary and Concise Encyclopedia.* While Rawle did alter the title, he did not single-handedly change the dictionary’s structure. Rawle’s stated purpose in editing the third revision was “to treat much more fully all encyclopædic titles, except those in which there has been no development in recent years, while adding many dictionary and other minor titles not found in the last Revision.” Rawle did not claim to have introduced encyclopedic entries where none existed before, simply to have expanded existing ones—and he did not claim even to have done that in all cases.

§42 Rawle’s 1914 revision added an extra volume to the dictionary, but *Bouvier’s* had always been a multivolume work. Black’s foremost goal for his dictionary—what would set it apart from existing law dictionaries—was comprehensiveness. But he was also aware of the practical advantages of publishing a dictionary in one volume. He explained his reconciling of the two potentially conflicting aims thus: “[C]omprehensiveness is possible (within the compass of a single volume) only on condition that whatever is foreign to the true function of a lexicon be rigidly excluded. The work must therefore contain nothing but the legitimate matter of a dictionary, or else it cannot include all the necessary terms.”

§43 If Black’s insistence on a single volume was a response to Bouvier, however, it was not directed at Bouvier alone. Of the seven post-Bouvier American law dictionaries that Black cites, only three are complete in one volume; many of the European dictionaries are also multivolume publications.

§44 Black’s views on the need for a new law dictionary—one that would be comprehensive but exclude all nondictionary material and therefore fit in one volume—are reasonably clear. But then why, rather than simply calling for a better law dictionary as others have, did Black undertake to write one himself?

§45 Although Black’s name is most closely associated today with his *Law Dictionary*, neither legal lexicography nor even legal language in general was his primary scholarly interest. According to the memorial written by his friend and colleague David Hill, “throughout his career it was the Constitution of the United

104. Francis Rawle, *Preface* to *id.* at v.
105. *Black*, supra note 14, at iii.
106. See supra note 92. Henry Adams’s dictionary was clearly planned as a multivolume work, but only the first volume, A–E, was ever published. *Adams*, supra note 92.
107. However, one cannot rule out the possibility that an editor might misrepresent his work—or the work of his competitors—in order to increase sales or his own prestige. *Micklethwait*, supra note 10, at 11 (noting that Webster, in the introduction to his *American Dictionary*, criticized other lexicographers’ copying of their predecessors’ work, even though “he never seemed to notice that many of the criticisms he directed at others might with equal justice have been applied to himself.”) See, e.g., *Starnes & Noyes*, supra note 9, at 50 (giving the example of Edward Phillips, who, in the “Advertisement” of his 1658 *New World of English Words*, “seeks to disparage and discredit the work of Blount. His debt to [Blount’s] *Glossographia*, is, however, so obvious that he who runs may read”).
States, its origin, its influence and its significance for social security and development, that occupied the background of his thoughts.”

¶46 Perhaps it never occurred to Henry Campbell Black that he was “unqualified” to write a law dictionary. He knew the law, after all, and he was a respected legal writer and editor.

¶47 Even for writing general English dictionaries, no particular training or study was required. Robert Cawdrey, author of the first English dictionary, A Table Alphabeticall, was a schoolmaster. The famous Samuel Johnson, creator of what most scholars agree was the first great English dictionary, had left Oxford without a degree and spent the years leading up to his preliminary Plan of a Dictionary of the English Language (1747) toiling as a writer of little renown.

110. Id. at 67.
111. See, e.g., Garner, supra note 29, at iii (noting that the supremacy of Black’s dictionary is “partly because of his academic standing”).
112. In proposing an ideal law dictionary, one contemporary writer stipulated simply: “It would require a paid editor who must be a competent lawyer, and he would require paid assistants. . . .” Chalmers, supra note 99, at 286.
117. Starnes & Noyes, supra note 9, at 13.
119. Johnson, Samuel, in British Authors Before 1800, at 293, 294 (Stanley J. Kunitz & Howard Haycraft eds., 1952).
known for his enthusiasm for and skills in pomology, genealogy, and calligraphy;¹²² Noah Webster¹²³ was a teacher and lawyer.¹²⁴

¶48 This trend began to change with James Murray, the creator of the Oxford English Dictionary.¹²⁵ Murray was a schoolmaster, like many of his predecessors, but he had also studied widely in subjects that included languages, and from his work on Scottish dialects he was known as a prominent philologist.¹²⁶ But while Black and Murray were contemporaries, it took time for an academic background similar to Murray’s to be widely considered a qualification for editing a dictionary.

¶49 Especially for dictionaries in specialized subjects such as law, expertise in the subject field was often considered more important than expertise in lexicography. Indeed, the first editor of a major American law dictionary who shows signs of having given much thought to his lexicographic methods is Bryan Garner.

¶50 Garner has described the state of modern legal lexicography as being analogous to the stage that general lexicography had reached in the mid-eighteenth century: “The legal lexicographer of the late twentieth century finds something akin to what Samuel Johnson found when he undertook his great Dictionary: a speech copious without order, and energetic without rules; perplexities to be disentangled, and confusion to be regulated; choices to be made out of boundless variety.”¹²⁷

¶51 Garner’s editorship is considered to have revived an old standard.¹²⁸ But how did Black’s manage to stay on top until Garner’s arrival on the scene in 1996? And how did it manage to usurp the top spot from Bouvier’s in the first place?

¶52 One probable reason for Bouvier’s longtime popularity was that it was considered “perhaps the most scholarly in its treatment, providing besides definitions articles on many of the legal topics.”¹²⁹ Whisner makes an intriguing and persuasive argument that a significant part of what motivates users to choose one dictionary over another is the not unreasonable tendency to trust the opinions of colleagues and mentors.¹³⁰ If law professors consistently recommend one specific dictionary, it is only natural for students to consider that dictionary the authority and continue using it in their work. One would hope that Supreme Court justices would put more thought than the average student or lawyer into which dictionaries they con-

¹²². Id. at 285. Gibson also notes that Johnson was “given to writing down ‘choice English extracts from classic authors.’” (quoting Henry Pynchon Robinson, Samuel Johnson Jr. of Guilford and His Dictionaries, 5 Conn. Mag. 526, 527 (1899)).


¹²⁸. See Mersky & Price, supra note 33, at 720 (suggesting that Garner has done so much to update and improve Black’s Law Dictionary that it may one day be known as Garner’s instead of Black’s).


sult. However, Thumma and Kirchmeier conclude, based on their detailed analysis of the Supreme Court’s use of dictionaries, that “the Court’s analysis to date and the broad range of dictionaries used do not demonstrate that the Court is following a particularly principled method in selecting specific dictionaries.”

¶53 The easy answer to why Black’s caught up with and then surpassed Bouvier’s in popularity in the mid-twentieth century is that Bouvier’s was never updated after 1934. In contrast, West published a fourth edition of Black’s in 1951, a fifth in 1979, and a sixth in 1990. Since Garner took over with an unnumbered “pocket” edition in 1996, three more editions have come out: in 1999, 2004, and 2009. The currency of a legal dictionary is important to practitioners because, as the law develops, new terms appear and the meanings of established terms may change.

¶54 Whisner discusses users who still prefer Bouvier’s, some of them specifically because it has not been updated. However, virtually all mainstream legal students, scholars, and practitioners see the advantage of an up-to-date dictionary, although many acknowledge that Bouvier’s is still useful for understanding the historical meanings of terms.

¶55 The question then becomes: Why did Black’s continue to be revised periodically, while Bouvier’s languished? Both brands continued long beyond the lives of their creators, so the answer does not lie in the lexicographers’ personalities. It is more instructive to consider the publishers.

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131. Thumma & Kirchmeier, supra note 5, at 272 (footnote omitted); see also Looking It Up, supra note 28, at 1447 (“[T]here has been no apparent pattern to (or discussion of) the Justices’ choices of volumes or vintage.”).

132. There was also a “revised fourth edition” in 1968, with additional printings over the next ten years.

133. Various abridged editions are not counted here.

134. Editors of dictionary revisions often make this point. See, e.g., Foreword to BALLENTINE’S LAW DICTIONARY, at iii, iii (3d ed. 1969) (“Language is alive! To remain relevant, a dictionary requires periodic revision and updating. . . . [L]aw and language change too quickly for a practicing attorney to rely on a dictionary a generation old.”); Garner, supra note 33, at ix (“[M]odern law hurries headlong into decade after decade of new statutes, new doctrines, and new tripartite tests. The world—as well as the law that tries to govern it—is changing at a dizzying pace. If you want evidence of this change, look inside for the hundreds of new entries such as cyberstalking, jurimetrics, parental kidnapping, quid pro quo sexual harassment, reproductive rights, and viatical settlement.”). Likewise, a common criticism of law dictionaries is the lack of newer legal terms. See, e.g., Chalmers, supra note 99, at 284 (“As law develops and changes, so the meanings of the terms used develop and change.”); Shapiro, supra note 108, at 150 (criticizing the then-current editions of Black’s and Ballentine’s for “their failure to collect important newer vocabulary, with ‘newer’ denoting terms entering currency within the last half-century”).


136. Id. at 105–06, ¶ 16 (“[M]any . . . believe that the law took a wrong turn around the time of the Civil War, so they do not want sources that reflect changing legal standards.”).

137. See, e.g., BARKAN ET AL., supra note 33, at 405; Aprill, supra note 28, at 310 n.190 (“The Court quite regularly uses Bouvier’s as a historical source, citing its earlier editions along with other dictionaries, legal encyclopedias, and additional authorities to show contemporaneous usage of a word at issue in an older statute.”).

138. The last edition of Bouvier’s was published eighty-three years after his death; the latest edition of Black’s (so far), eighty-two years after his.
§56 Bouvier’s had a number of different publishers over its life span: T. and J.W. Johnson in Philadelphia, The Boston Book Company, and the Banks Law Publishing Company in New York, among others. Black’s, on the other hand, has always been published by West.\textsuperscript{139} The long-standing patronage of a major law publisher has surely helped keep Black’s going.

§57 Beyond the practical difficulties of perpetuating a line of dictionaries for over a century and with changing publishers, there may have been a factor inherent in Bouvier’s dictionary itself that led to its discontinuation: its encyclopedic nature, which Bouvier himself wanted to avoid. The encyclopedic approach of later editors is not “bad” per se; in fact, it is this characteristic that has been widely praised as scholarly. But the size and scope of later editions of Bouvier’s may have made it too difficult to work with, both for many users and for potential editors or publishers who might otherwise have continued to issue updated editions.

[H]ypertrrophy is what led Bouvier’s law dictionary to become obsolete. It couldn’t accurately restate the whole law in two or three volumes. The essays had already been superseded by specialist treatises and by much bigger encyclopedias. It became impossible to keep the essays up to date. So by the late 1930s, the publishers had abandoned Bouvier’s dictionary as an unworkable venture.\textsuperscript{140}

§58 The cessation of Bouvier’s did not necessarily lead to the supremacy of Black’s, of course. While it is probably not worthwhile to examine every law dictionary that was contemporaneous with Bouvier’s or Black’s and analyze what went wrong, there is one other dictionary well known enough to merit discussion: Ballentine’s.

§59 In the 1980s, Ballentine’s was still considered by some to be one of “[t]wo dictionaries [that] took over the turf, and have kept it.”\textsuperscript{141} The Ballentine name continued to appear now and then up until the 1990s: Lawyers Cooperative Publishing issued a “legal assistant edition” in 1994\textsuperscript{142} and a “legal dictionary and thesaurus” in 1995.\textsuperscript{143} However, the last revision of Ballentine’s Law Dictionary itself was in 1969. Understandably, Ballentine’s has become a largely negligible competitor in the twenty-first century.\textsuperscript{144}

§60 So where did Ballentine’s go wrong? Why has it not been deemed worth revising in over forty years? It might be more interesting to ask why Ballentine’s was updated twice and why the Ballentine name was applied to two minor 1990s dictionaries. While Ballentine’s has garnered some positive responses,\textsuperscript{145} real enthusiasm

\begin{thebibliography}{99}
\bibitem{139} West also published Bouvier’s eighth edition in 1914, along with the Vernon Law Book Company in Kansas City, Missouri. Vernon is named above West on the title page, at least on the volume that was scanned for HeinOnline. \textit{Bouvier’s Law Dictionary}, supra note 20, at i.
\bibitem{140} Garner, supra note 13, at 152.
\bibitem{141} Mellinkoff, supra note 19, at 434 (the other of the two dictionaries is Black’s); see also \textit{Cohen Et al.}, supra note 31, at 413 (“The two major legal dictionaries most used in the United States are Black’s Law Dictionary, 5th ed. (West, 1979) and Ballentine’s Law Dictionary, 3d ed. (Lawyer’s Co-op, 1969).”).
\bibitem{142} \textit{Jack G. Handler, Ballentine’s Law Dictionary} (legal assistant ed. 1994).
\bibitem{143} \textit{Jonathan S. Lynton, Ballentine’s Legal Dictionary and Thesaurus} (1995).
\bibitem{144} See Mersky & Price, supra note 33, at 720.
\bibitem{145} \textit{See, e.g., Cohen Et al.}, supra note 31, at 414 (“Although older and slightly smaller than Black’s, Ballentine’s Law Dictionary is an excellent comprehensive dictionary.”); \textit{Mudge}, supra note 31, at 130 (calling Ballentine’s an “[e]xcellent one-volume dictionary” and giving a relatively lengthy description of its features).
\end{thebibliography}
for the work has sometimes been conspicuously absent. For example, the foreword to the first edition contains no direct praise of Ballentine or his work—the only time that Ballentine is even mentioned is in the final, one-sentence paragraph: “I am glad to take advantage of the request to write a foreword for Mr. Ballentine’s dictionary in order to say to law students generally what I have been saying to my own students with all earnestness for the past thirty years.” 146 The unsigned foreword to the third edition fails to mention James Ballentine at all. 147

¶ 61 Ballentine did introduce one innovation in law dictionaries: a guide to pronunciation.

As to the pronunciation, it is the editor’s belief that this is the first law dictionary in the English language which contains this feature. His experience and that of other lawyers and law teachers has proved the need and importance of a law dictionary giving the correct pronunciation of legal terms. 148

The forewords to both the first and the third editions point out this feature—and only this one: “The pronunciation feature, which first brought this dictionary to the legal profession’s immediate attention in 1930, has been retained and improved by the adoption of the simplest, clearest available keys and guides.” 149

¶ 62 Ironically, it is this very feature that is the first to be attacked in a scathing 1970 review of Ballentine’s third edition. “[T]he front inside cover is devoted to a ‘key’ presumably to these pronunciations. ‘Lock’ would be a better word than ‘key,’ because the material does nothing more than obfuscate the question of how a word is to be pronounced.” 150 But whether other law dictionary users shared this dissatisfaction with the pronunciation guidance is almost beside the point. Pronunciation guidance was Ballentine’s one claim to fame, and by 1969 it was no longer the only American law dictionary with this feature. The 1951 fourth edition of Black’s boasts “with guide to pronunciation” at the end of its subtitle. 151 Bryan Garner has continued to include and improve the pronunciation guides, explaining that they now “reflect how American lawyers actually say the words and phrases—not how English lawyers used to say them (and not necessarily how Latin teachers would

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147. Foreword to Ballentine’s Law Dictionary, supra note 134, at iii, iii.


149. Foreword, supra note 147, at iii. See also Pound, supra note 146, at v (mentioning especially the importance of pronunciation guidance for Latin terms).

150. Victor M. Gordon, Book Review, 44 Conn. B.J. 126, 126 (1970) (reviewing Ballentine’s Law Dictionary, supra note 134). Gordon’s main objection to the pronunciation key is that the same symbol is used for short i (as in pin, it, and biscuit) and for long i (as in pine, fight, and file). After complaining of many other flaws, Gordon confusingly ends the review with a lukewarm recommendation: “[D]espite the many adverse criticisms in this review, if an office or student has to have one dictionary, this may as well be it, on the theory that Black’s will certainly not be immune from some of Ballentine’s faults, and will certainly be possessed of some of its own foibles and limitations not inherent in the work here under review.” Id. at 129–30.


152. Black’s did receive some accolades during this time on its own merits and not just in comparison to the outdated Ballentine’s and Bouvier’s. See, e.g., Dan Henke, Book Review, Black’s Law Dictionary, 65 A.B.A. J. 1378, 1380 (1979) (“In substantive content and usable format Black’s is unbeatable. . . . The book is a delight to use and read.”).


154. Mellinkoff, supra note 19, at 434. Black’s and Ballentine’s are also criticized collectively in Shapiro, supra note 108.

155. Mellinkoff, supra note 19, at 435. This complaint about law dictionaries had been around for nearly a century by the time Mellinkoff penned his article. See William C. Anderson, Law Dictionaries, 28 A.M. L. Rev. 531, 532–33 (1894) (calling “[t]he antiquated expressions in question . . . [which] for one to ten or more centuries have been dead beyond resuscitation . . . such information as delights only the antiquarian, the pedant and the bookworm (for whom law books are not made) . . .”).


157. Shapiro, supra note 108, at 150. Similarly, Sloane found that “there are expanding branches of law that receive too little attention from the editors.” Sloane, supra note 156, at 324.

158. Mellinkoff, supra note 19, at 435. (quoting the fifth edition of Black’s: “We still retain the phrase, in the common saying, when we would undervalue a man, that he is not worth a doit.”).

have us say them).” So with its one signature feature no longer unique, it is not surprising that interest in Ballentine’s waned.

**Black’s Today**

§63 By the middle of the 1990s, Black’s Law Dictionary was the premier American legal dictionary, but its status as such was more or less by default. With a sixth edition having been published in 1990, it was by far the most current of the three major dictionaries. Even the fifth edition in 1979 made Black’s the most current by a decade throughout the 1980s.

§64 Despite its advantage over Ballentine’s in currency, Black’s was sometimes lumped together with Ballentine’s for common criticism in the 1980s and 1990s. “Black’s and Ballentine’s are not the same; each has special virtues and special vices. They have sufficient in common to warrant discussing them collectively as B & B, without specifying which is sweeter and which is drier.”

§65 The main critiques of Black’s (and Ballentine’s) from this era fall into four categories: (1) inclusion of too many obsolete legal terms, or, “claptrap from the feudal system”; (2) inclusion of too many terms that are not specifically legal; (3) exclusion of more recently introduced terms; and, (4) as with the dictionaries of old, copying from earlier dictionaries. As an example of the latter, Mellinkoff points to the long-obsolete word *doitkin*, which is still to be found in the 1969 Ballentine’s and the 1979 Black’s—with Black’s even retaining Thomas Blount’s 1670 comment about the word, using some of Blount’s original phrasing. Mellinkoff is not charging the twentieth-century editors of Black’s and Ballentine’s with plagiarism; he is suggesting that editors of the dictionary revisions copy too many terms from previous editions without evaluating whether definitions need updating or whether the terms are even still relevant to law dictionary users.
Before assuming the editorship of *Black’s*, Bryan Garner was editor of the *Oxford Law Dictionary (OLD)*, intended as “the first-ever historical law dictionary.” Plans for the dictionary were canceled for financial reasons, but Garner wrote about the project while it was still under way. His argument for the need for a new law dictionary contains inherent criticisms of those that existed at the time. “Because the language of the law has remained largely untraversed by our best lexicographers since the days of Noah Webster (himself a lawyer), abundant inconsistencies have grown up within it.”

Like Shapiro, Garner notes that “much of the legal lexicon has remained unrecorded. Until the appearance of my *Dictionary of Modern Legal Usage* . . . many 19th-century and 20th-century legal neologisms found no place in existing dictionaries, legal or nonlegal.” He continues, “More important than tracking down all these neologisms, however, is setting forth the changes in meaning that particular legal terms have undergone.”

Far more than just adding new vocabulary and updating the definitions, Garner promised a completely new approach to legal lexicography: “The OLD will be unique. No law dictionary has yet been compiled on modern lexicographical principles. Many existing law dictionaries are poorly written, function more as encyclopedias than as dictionaries, lack comprehensive treatment, and provide little if any guidance on the development of legal language . . . .”

With the procedure for compiling the *Oxford English Dictionary* as a model, Garner envisioned that “[m]embers of the OLD staff and volunteer readers will systematically read and excerpt historical legal texts, so that the Center for Legal Lexicography may build a storehouse of lexical items, in the form of illustrative quotations, from which to construct the OLD.”

Human readers would not be the only ones systematically searching texts. Full-text database searching, a relatively new research tool in 1989, offered possibilities never before available to lexicographers. “Full-text databases such as LEXIS or WESTLAW, by searching billions of words of text, can retrieve usage examples for less common words that elude even the largest dictionaries.” In addition to identifying words that had previously been omitted from dictionaries because they are either uncommon or newly emerging, database searching can show when terms fall out of use. “A new law dictionary, seeking to exclude obsolete


161. BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE (2d ed. 1995). Despite the title, A Dictionary of Modern Legal Usage is more a style guide than a true dictionary. For example, under and: “Beginning Sentences. It is a rank superstition that this coordinating conjunction cannot properly begin a sentence. And for that matter, the same superstition has plagued but, q.v.” Id. at 55.

162. GARNER, supra note 159, at 337.

163. Id.

164. The Center for Legal Lexicography, a collaboration between the University of Texas and Oxford University Press, was the group that was to be responsible for the OLD. See id. at 335.

165. Id. at 337.

166. See id. at 338.

167. Shapiro, supra note 108, at 149.
entries from its word-list, could adopt a policy that terms which do not appear in any nineteenth or twentieth century case on LEXIS or WESTLAW will be left out.”

¶71 The Oxford Law Dictionary never came to be, but, luckily, Garner’s talents have not gone to waste. Garner applied the same “modern lexicographical principles” that he had discussed regarding the OLD when he turned his attention to revamping Black’s, making the 1996 pocket edition “something of a radical leap forward in the evolutionary line” of revisions.

¶72 The main difference between the envisioned OLD and the actual revised editions of Black’s under Garner’s editorship seems to be in the historical focus. Garner states of the seventh edition, the first full-length edition of Black’s that he produced, “Significant strides have been made both in modernizing this edition and in improving its historical depth.” Nevertheless, it cannot be said that in the seventh and subsequent editions of Black’s “the entirety of the legal vocabulary [is] marshaled and defined so as to trace its historical development from the 16th century to the present day,” as was planned for the OLD. This is inevitable, given that Black’s continues to be published in a single volume, whereas the OLD was to be a multivolume work containing about 25,000 entries of about 250 words each.

¶73 Garner’s revision of Black’s was, in fact, more of a rewriting than a revision. Beginning with the 1996 pocket edition, Garner and his team “[c]onsidered entries entirely anew rather than merely accepting what previous editions have said.” They continued this practice when compiling the seventh edition, which introduced more than 4500 new entries; furthermore, “[o]f the remaining 20,000 entries, all have been thoroughly revised: sharpened and tightened.”

¶74 Like the planned OLD, the rewriting of Black’s was the work of many scholars and practitioners, including experts in specialized areas of law. The team examined a wide range of sources, including Westlaw. Likewise, Garner fulfills the promise he made for the OLD, to include illustrative quotations. While he has probably not been able to include as many quotations in the one-volume Black’s as he would have liked to in the multivolume OLD, the seventh edition of Black’s does include more than 2000 scholarly quotations.

¶75 Another change that has brought Black’s in line with modern lexicographical practice is that, starting with the seventh edition, Black’s is constantly subject to review and revision:

West Group has now made the editing of Black’s Law Dictionary, in its various editions, an ongoing project. This means that Black’s, like all major dictionaries outside the law, will

168. Id. at 150.
170. Garner, supra note 33, at ix.
172. Id.
175. Id. at xii–xiv.
176. Id. at x. Garner does not mention LexisNexis or any other databases, no doubt because Black’s is a West product.
177. Id.
be a continuing work in progress. As the law continues its rapid evolution, *Black’s Law Dictionary* will keep pace.\textsuperscript{178}

And *Black’s* is keeping pace so far, with two new editions published in the decade between the appearance of the seventh edition and the present.

\textsuperscript{¶}76 Bryan Garner may have taken over *Black’s* just in time to save the brand from obsolescence. It is still the most prominent law dictionary by default—if only in that it has no rival that is nearly as current. However, it seems entirely possible that if *Black’s* had not been radically revised when it was, a competing law dictionary—perhaps a brand-new one—could have taken over the top spot.

\textsuperscript{¶}77 Now, when users “look it up in *Black’s*,” they may be doing so only because it is the one their law professors told them to use once upon a time. Or they may choose *Black’s* only because it is searchable on Westlaw.\textsuperscript{179} And that is probably all right. But law librarians, who are in the business of knowing and using the best legal research tools, can recommend *Black’s* with confidence, understanding why it is the standard American law dictionary.

\textsuperscript{178} Id.

\textsuperscript{179} As of this writing, the ninth edition of *Black’s* is searchable through Westlaw, and the third edition of *Ballentine’s* is searchable through LexisNexis.