

Holistic Constitutional Interpretation

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ABSTRACT

This Article identifies and advocates for holistic constitutional interpretation, a method in which interpreters consider disputed constitutional terms or provisions in the context of the Constitution as a whole to gain insight into otherwise inscrutable textual questions. Holistic interpretation resembles, but is distinct from, alternative methods like structural argument and intratextualism—maintaining a focus on constitutional text that distinguishes it from structural methods, but approaching context in a more flexible manner than the more cabined intratextualist approach.

While some scholars recognize holistic interpretation as a distinct method, their focus is often fixed on federal constitutional law. This Article adds to existing discussions of holistic interpretation by demonstrating how the method pervades the interpretation of a wide range of legal instruments. Courts interpret contracts, wills, deeds, judgments, and statutes in a holistic manner—urging consideration of the whole document when interpreting a provision in dispute. Holistic interpretation is common in state constitutional cases as well, with the vast majority of state supreme courts purporting to interpret state constitutions as a whole.

Holistic interpretation enriches textualist methodology, which might otherwise become overly technical or hyper-fixated on arcane definitional and grammatical disputes. It also takes the wind out of the sails of alternate interpretive methodologies that thrive on perceptions of ambiguity and uncertainty. While its implications for individual rights are mixed, holistic interpretation strengthens textualist methodology and is a useful tool for those who might otherwise be troubled by abstract or ambiguous constitutional language.

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I. INTRODUCTION

Constitutional interpreters frequently suffer from tunnel vision. Focusing on the provision at issue, they interrogate the text down to the syllable. Dictionaries are dusted off, history books cracked open, and sentence diagrams employed to determine the True Meaning.¹ This “clause-bound” approach describes the Supreme Court’s and constitutional scholars’ typical approach to constitutional interpretation.² The typical textualist approach isolates the provision at issue,

1. See JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 12 (1980) (identifying the clause-bound approach to interpretation and contrasting it with an approach that draws on the “general themes of the entire constitutional document”); William G. Merkel, *A Cultural Turn: Reflections on Recent Historical and Legal Writing on the Second Amendment*, 17 STAN. L. & POL’Y REV. 671, 685–86 (2006) (critiquing “the parlor game of naked textualism with its dictionaries and offhand references to the Federalist and Blackstone”); see James Durling, Note, *Diagramming Interpretation*, 35 YALE J. REG. 325, 330–34 (2018) (providing examples of courts using sentence diagrams to interpret statutes and constitutions); see also Maura D. Corrigan, *Textualism in Action: Judicial Restraint on the Michigan Supreme Court*, 8 TEX. REV. L. & POL. 261, 266 (2004) (“For those of you who think that diagramming sentences in grade school was a waste of time, it has been used often by our Court to make sure we have the correct reading of a sentence.”).

2. See Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 COLUM. L. REV. 1855, 1882–83 (2023) (“Despite calls to interpret the U.S. Constitution holistically or synthetically and occasional examples of ‘combination analysis’ in federal courts, federal constitutional adjudication tends to proceed in a more clause-bound fashion.”); Jesse M. Cross, *National “Harmony”: An Inter-Branch Constitutional Principle and Its Application to*

breaks it down word-by-word, and considers its sentence structure to get at the true meaning.³

This Article explores and advocates an alternative to narrow, “clause-bound” interpretation: holistic interpretation. Using a holistic approach, interpreters consider the broader text of the Constitution, examining how the meaning and implications of other provisions in the Constitution may inform the meaning of the provision at issue. Most typically, this involves considering the Constitution as a whole, though holistic interpretation also includes narrower instances of considering other particularly relevant provisions or focusing on interpretations that are harmonious or avoid conflicts.⁴

The Article’s first goal is to distinguish holistic interpretation from other methods with which it’s likely to be confused. Beyond the general consideration of context, the two distinct methods I explain and distinguish are structural interpretation and intratextualism. Structural interpretation, most notably advocated by Charles Black, involves applying a “method of inference from the structures and relationships created by the constitution in all its parts or in some principal part.”⁵ Black urges that interpreters pay attention to structure rather than solely focusing on the text because structural reasoning “has to make sense—current, practical sense,” and there’s no guarantee that textualism alone “will make sense, for a court may always present itself or even see itself as being bound by the state intent, however nonsensical, of somebody else.”⁶ While structural interpretation resembles holistic interpretation, its focus on constitutions’ functions and the goals those functions are meant to achieve departs from the text in a manner that distinguishes it from holistic analysis.⁷

One might, therefore, be inclined to equate holistic interpretation with the “intratextualist” method espoused by Akhil Amar.⁸ Under Amar’s intratextualism, interpreters derive the meaning of constitutional text by relying upon usage of the same or similar language elsewhere in the document.⁹ While this approach resembles (and is likely a variation of) holistic interpretation, holistic analysis is broader—considering not only instances of similar or identical words and phrases, but relevant implications of other provisions that might be differently worded or touch on textually distinct subject matter.

Diversity Jurisdiction, 93 NEB. L. REV. 139, 144 (2014) (“Clause-bound methods of interpretation, which are defined by a belief that each constitutional clause can be studied and adequately understood in isolation from each other constitutional provision, continue to prevail among constitutional scholars.”).

3. See Akhil Reed Amar, *Intratextualism*, 112 HARV. L. REV. 747, 788 (1999) (“Textual argument as typically practiced today is blinkered (‘clause-bound’ in Ely’s terminology), focusing intently on the words of a given constitutional provision in splendid isolation.”).

4. See *infra* Section III.B.

5. CHARLES L. BLACK, JR., *STRUCTURE AND RELATIONSHIP IN CONSTITUTIONAL LAW* 7 (1969).

6. *Id.* at 22.

7. Michael C. Dorf, *Interpretive Holism and the Structural Method, or How Charles Black Might Have Thought About Campaign Finance Reform and Congressional Timidity*, 92 GEO. L.J. 833, 835–36, 835 n.10 (2004).

8. See Amar, *supra* note 3.

9. See *id.* at 748.

While distinguishing holistic interpretation from structural and intratextualist alternatives is a useful clarification, it isn't revolutionary. I'm not the first to suggest that a more holistic approach to textualism is a distinct method. Michael Dorf acknowledges that a holistic approach to the text is distinct from Charles Black's structural methodology and explores some of the method's potential implications.¹⁰ Vicki Jackson urges a holistic approach, though her discussion of the theory centers around particular applications of holistic analysis—specifically the implications of more recent constitutional amendments on the interpretation of the Constitution's original text and earlier amendments.¹¹ One of the more sustained treatments of a method approaching holistic interpretation is Michael Coenen's discussion of "combination analysis," in which courts justify results by considering the combined effects of multiple constitutional provisions.¹²

This Article synthesizes and builds on this still-limited literature, situating these applications and variations under the broader umbrella of holistic interpretation. Doing so not only unifies the instances of holistic reasoning these authors identify and advocate, but it also grounds holistic interpretation in practices in other areas of law. Those who advocate for holistic interpretation tend to focus on federal constitutional interpretation—drawing their examples and applications from a limited domain.¹³ I move beyond this cloistered approach and demonstrate the prevalence of holistic reasoning in other legal fields. Legal actors frequently employ holistic methodology to interpret contracts, wills, deeds, judgments, and statutes.¹⁴ State courts also employ the method—often explicitly urging that state constitutions be interpreted as a whole document.¹⁵

Acknowledging the range of holistic interpretation's adoption bolsters existing defenses of the method. Critics often accuse holistic interpretation and other context-conscious methods of being overly complex, and therefore difficult for judges to employ.¹⁶ Methodological complexity also leaves more room for manipulation, including the selective use of context to support desired outcomes.

10. See Dorf, *supra* note 7, at 835.

11. See Vicki C. Jackson, *Holistic Interpretation: Fitzpatrick v. Bitzer and Our Bifurcated Constitution*, 53 STAN. L. REV. 1259, 1281–84 (2001).

12. See Michael Coenen, *Combining Constitutional Clauses*, 164 U. PA. L. REV. 1067 (2016).

13. See, e.g., Jackson, *supra* note 11 (focusing on the United States Constitution and its holistic interpretation in light of more recent amendments); Coenen, *supra* note 12 (building from the individual rights and government power provisions contained in the federal Constitution); Kerry Abrams & Brandon L. Garrett, *Cumulative Constitutional Rights*, 97 B.U. L. REV. 1309 (2017) (drawing on a number of cases and examples from the Supreme Court's constitutional cases).

14. See *infra* Section III.A.

15. See *id.*

16. See Adrian Vermeule & Ernest A. Young, *Hercules, Herbert, and Amar: The Trouble with Intratextualism*, 113 HARV. L. REV. 730, 759–74 (2000) (arguing that time and resource constraints of most judges risks error, inefficiency, and manipulation); Michael J. Gerhardt, *The Utility and Significance of Professor Amar's Holistic Reasoning*, 87 GEO. L.J. 2327, 2330 (1999) (identifying as a "possible weakness of the holistic approach" the concern that "it arguably makes constitutional interpretation unwieldy"); Aaron-Andrew P. Bruhl, *Hierarchy and Heterogeneity: How to Read a Statute in a Lower Court*, 97 CORNELL L. REV. 433, 475–79 (2012) (arguing against wide-context approaches to interpretation in time-pressured and resource-strained lower courts).

But many courts' usage of holistic interpretation to interpret a diverse array of legal documents demonstrates that courts can, and do, employ the method.¹⁷ What's more, the breadth of holistic interpretation's use creates an opportunity to identify rules, standards, and norms, so long as courts and commentators widen their focus beyond the immediate context of federal constitutional interpretation.¹⁸

This point leads into the Article's normative discussion of why holistic interpretation is worth taking seriously and pursuing. Holistic interpretation enriches textualism, which might otherwise become overly technical and lacking in perspective when restricted to specific clauses.¹⁹ Additionally, holistic interpretation resolves questions that might otherwise seem to require alternate methods, including analysis of original meaning and historical tradition. Lawyers need not play-act as historians when the entire text of a constitution provides sufficient resources to resolve a dispute.²⁰

More complicated are the implications holistic interpretation carries for the scope of individual rights and their protection. Discussion of holistic methodology often focuses on how multiple constitutional provisions might combine to enhance the protection of individual rights. While this is likely the case in some instances,²¹ constitutions—particularly state constitutions—may contain provisions that, when read with particularly broad or abstract rights provisions, limit the scope of individual rights. Most state constitutions, for example, include provisions restricting the definition of marriage to a relationship between one man and one woman.²² While

17. This observation also takes the force out of critiques asserting that judges “do not, and plausibly should not, behave the way the holistic theorists would have them behave,” which relies on overly broad inferences from clause-bound interpretation's prevalence in federal constitutional law. See Vermeule & Young, *supra* note 16, at 774–77.

18. See Gerhardt, *supra* note 16, at 2333–34 (acknowledging and commending efforts by advocates of holistic approaches to reconcile their readings with other methods).

19. See *Com. v. Grohowski*, 980 A.2d 113, 116 (Pa. 2009) (Klein, J., dissenting) (“While by hindsight it is true that the drafters should have been clearer in the language and this section should be revisited, there are often unintended consequences in drafting complex rules and we should not elevate textualism over the clear purpose of a statute or rule.”); Victoria Nourse, *Misunderstanding Congress: Statutory Interpretation the Supermajoritarian Difficulty, and the Separation of Powers*, 99 GEO. L.J. 1119, 1137 (2011) (noting that seemingly simple textualist rules are grounded in complex academic theory that “has suggested to some academics that judges should go so far as to embrace absurd results if the text so demands”).

20. See Helen Irving, *Outsourcing the Law: History and the Disciplinary Limits of Constitutional Reasoning*, 84 FORDHAM L. REV. 957, 961 (2015) (arguing that “judges should not outsource their legal decisions to historians,” and that this is “what happens when judges draw on secondary histories to reach constitutional conclusions in particular legal disputes.”).

21. See Robert F. Williams, *Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together*, 2021 WIS. L. REV. 1001 (2021) (advocating the approach of reading multiple state constitutional provisions together to increase individual rights protections); Michael L. Smith, *Dignity and Abortion Rights Under State Constitutional Law*, 75 SYRACUSE L. REV. 863, 877–80 (2025) (arguing that state constitutional provisions espousing dignity rights or referencing dignity may be read alongside other provisions like individual rights and due process provisions to enhance reproductive autonomy protections).

22. See Michael L. Smith, *Constitutional Interpretation and Zombie Provisions*, 40 GA. ST. U. L. REV. 603, 618 (2024) (listing twenty-nine states with restrictive constitutional definitions of marriage).

federal constitutional law precludes these provisions from having a direct effect,²³ their appearance alongside broad rights provisions guaranteeing life, liberty, and property may curtail courts' interpretation of these rights provisions.²⁴ After all, how much protection to LGBTQ individuals does a constitution's abstract individual rights provision provide when that same constitution purports to limit marriage to heterosexual couples?

Acknowledging that separate constitutional provisions can, and do, influence one another's interpretations may draw attention to provisions that might otherwise fly under the radar. Whether they're inactive due to legal preclusion or disuse, they may exert an indirect influence in areas of more active dispute by providing interpretive context. Acknowledging the role that holistic interpretation already plays may therefore support calls for updating, eliminating, or amending these provisions. This may not do much good at the federal level.²⁵ But it might make a difference in the states, where constitutions are more frequently amended.²⁶

Section II of this Article dives into the interpretive literature, describing holistic interpretation and those who currently describe or advocate versions of the theory and distinguishing it from similar alternative approaches like structural interpretation and intratextualism. Section III moves from theory to practice, describing holistic interpretation's use across a wide range of legal subjects and providing examples of holistic interpretation in state and constitutional interpretation. I also parse out several variations of holistic interpretation, including admonitions to consider constitutions as a whole, along with more limited calls for harmonious interpretation and requirements that courts interpret provisions alongside other sections on related subjects, or within the same constitutional article or amendment.

Section IV sets forth the implications of holistic interpretation, arguing that the method enriches alternative forms of textualism that might become overly technical and risk missing the forest for the trees. Holistic interpretation may make what might otherwise be difficult interpretive tasks simpler, by providing additional resources and insight into questions courts face. This is particularly relevant when weighing between theories of interpretation, as theories like originalism or traditionalism that demand recourse to non-textual resources like historical practice and original meaning may be unnecessary in cases where the broader context of a constitution resolves the question of meaning. Additionally,

23. See *Obergefell v. Hodges*, 576 U.S. 644, 737 (2015) (ruling that bans on same-sex marriage violate federal constitutional rights to due process and equal protection).

24. See Smith, *supra* note 22, 653–56.

25. See Richard Albert, *The World's Most Difficult Constitution to Amend?*, 110 CAL. L. REV. 2005, 2013–16 (2022) (arguing that while the federal Constitution is amendable in theory, it is practically unamendable).

26. See ROBERT F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* 359 (2009) (“The states’ constitutions have been amended an average of about 1.25 times per year.”); see also JOHN J. DINAN, *THE AMERICAN STATE CONSTITUTIONAL TRADITION* 41–62 (2006) (describing the history of state constitutional development that led to increasingly flexible amendment procedures).

I address the complex question of whether holistic interpretation bolsters rights protections, concluding that while a holistic approach may enhance some rights, it may also limit others. Finally, in Section V, I consider and address potential objections to the theory.

While this Article's focus is holistic interpretation, and while I think the method is a useful tool for interpreters, I am not advocating holistic interpretation as a one-size-fits-all approach to constitutional interpretation. Courts do—and should—apply multiple methods of interpretation, though they should do so explicitly and explain their choice of method.²⁷ Holistic interpretation is relevant to this broader, pluralist approach to interpretation because it illuminates the potential of one choice of method (textualism) and does so in a manner that may obviate the need for alternatives—at least in certain cases.²⁸ An overall approach to constitutional interpretation that employs all tools in the toolbox benefits from an account that clarifies the nature and uses of one of the available tools.

II. STRUCTURALISM, INTRATEXTUALISM, AND HOLISM

A. *Structural Interpretation*

Structural interpretation looks to the “structures and relationships created by the constitution in all its parts or in some principal part,” and using these structural features to determine the meaning of a provision at issue.²⁹ Structural arguments may parse out “general themes of the entire constitutional document” and derive interpretations from these systematically-derived principles.³⁰ This approach is often functional—looking to how the Constitution is supposed to work in practice and adopting an interpretation consistent with that vision, rather than debating questions of grammar or competing dictionary definitions.³¹ It can

27. See PHILIP BOBBITT, *CONSTITUTIONAL FATE: THEORY OF THE CONSTITUTION* (1982) (identifying multiple modalities of argumentation that courts employ, including arguments from history, text, doctrine, prudence, structure, and ethics); Richard M. Re, *Permissive Interpretation*, 171 U. PA. L. REV. 1651 (2023) (acknowledging that Justices tend to depart from even those methods they explicitly advocate, and proposing a permissive approach to interpretation that emphasizes the choice of method and explaining the basis for that choice); Michael L. Smith, *Pluralism in State Constitutional Law*, 59 GA. L. REV. 1233 (2025) (arguing that state courts engage in a pluralist approach to constitutional interpretation and advocating that courts be more explicit regarding their choice of interpretive methodologies and justifications for those choices).

28. See *infra* Section IV.B (arguing that holistic interpretation removes the need for originalist interpretation in certain instances).

29. BLACK, *supra* note 5; see also BOBBITT, *supra* note 27, at 74 (“Structural arguments are inferences from the existence of constitutional structures and the relationships which the Constitution ordains among these structures.”).

30. See ELY, *supra* note 1, at 12–14.

31. *Id.* at 22–23; see also Deborah N. Pearlstein, *Form and Function in the National Security Constitution*, 41 CONN. L. REV. 1549, 1554 (2009) (“[W]hile formal interpretation can shed critical light upon, and sometimes resolve, key disputes about the scope of executive power, functional analysis is often unavoidable and sometimes required when it comes to understanding the structural provisions of the Constitution.”); see also John F. Manning, *Separation of Powers as Ordinary Interpretation*, 124 HARV. L. REV. 1939, 1950–58 (2011) (describing functionalist approaches to congressional power and separation of powers and how these approaches rely upon structural inferences).

be powerful. Robert Manning characterized the Rehnquist and Roberts Courts as employing “free-form” structural argument to “derive specific limitations on congressional power from relatively high-level inferences about federalism and, to a lesser extent, separation of powers.”³²

Structural interpretation has a long pedigree in American constitutional law.³³ In *McCulloch v. Maryland*, “[t]he classic example of structural constitutional interpretation,”³⁴ Chief Justice Marshall acknowledged that while the Constitution did not contain a specific provision enabling Congress to create a bank, Congress still had the power to do so.³⁵ Marshall drew from the functions of the Constitution, emphasizing that the Constitution’s drafters must have intended to “insure” the “beneficial execution” of “those great powers on which the welfare of a nation essentially depends.”³⁶ The Constitution, which was intended “to be adapted to the various crises of human affairs” could not foresee all exigencies—requiring a permissive reading of the Constitution’s Necessary and Proper Clause.³⁷

Structural arguments arise elsewhere in constitutional law. In setting forth its doctrine on separation of powers, the Court “has focused on abstract notions of divided power and checks and balances, in lieu of constitutional text,” in cases dating back to *Marbury v. Madison*.³⁸ The Court’s use of structural argument in addressing core constitutional concepts has given rise to extensive structural discussions in scholarship. Different scholars advance alternate structural arguments in support of their respective theories about the legitimacy and propriety of judicial review.³⁹

The modern Court employs structural reasoning as well. Jonathan Marshfield classifies *National Federation of Independent Business v. Sebelius*⁴⁰ as “a contemporary example of structural constitutional interpretation,” emphasizing Chief Justice Roberts’s reliance on “a structural argument regarding the proper distribution of power between Congress and the states” in interpreting the

32. John F. Manning, *Foreword: The Means of Constitutional Power*, 128 HARV. L. REV. 1, 30–32 (2014).

33. See Thomas B. Colby, *Originalism and Structural Argument*, 113 NW. U. L. REV. 1297, 1308 (2019) (“Structural reasoning in federalism cases goes back at least as far as *McCulloch v. Maryland* . . .”); see also Russell C. Bogue, *Statutory Structure*, 132 YALE L.J. 1528, 1531–32 (2023) (noting that “structural argument in constitutional law is nearly as old as the text of Constitution itself,” and comparing the comparatively extensive “scholarly attention” to structural constitutional argument with discussions of statutory structural interpretation).

34. Jonathan L. Marshfield, *Amendment Creep*, 115 MICH. L. REV. 215, 226 (2016).

35. *McCulloch v. Maryland*, 17 U.S. 316, 407, 420–21 (1819).

36. *Id.* at 415.

37. *Id.* at 415–19.

38. Colby, *supra* note 33, at 1309–10; see also Casey L. Westover, *Structural Interpretation and the New Federalism: Finding the Proper Balance Between State Sovereignty and Federal Supremacy*, 88 MARQ. L. REV. 693, 705 (2005) (“Structural analysis is commonplace in the Supreme Court’s separation of powers jurisprudence.”).

39. See Jack Wade Nowlin, *The Constitutional Limits of Judicial Review: A Structural Interpretive Approach*, 52 OKLA. L. REV. 521, 527–29 (1999) (describing structural arguments advanced by Robert Bork, Judge Easterbrook, John Hart Ely, and Alexander Bickel).

40. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

Necessary and Proper clause to conclude that the Affordable Care Act's health insurance mandate "exceeded Congress's authority under the Necessary and Proper Clause."⁴¹ Casey Westover demonstrates how the Court's state sovereignty and federal supremacy jurisprudence rests on structural analysis—noting Justice Scalia's "explicit[]" reliance on structural argument in *Printz v. United States*.⁴² Scalia's reliance on structural argument is noteworthy—given Scalia's association with originalist and textualist methodologies.⁴³

Structuralist reasoning persists in even more recent, high-profile cases. The Supreme Court's determination that the Fourteenth Amendment did not bar Trump from eligibility for the presidency is a recent, high-profile example of structural interpretation.⁴⁴ In *Trump v. Anderson*, despite a wave of originalist argumentation and scholarship leading up to the case,⁴⁵ the Court refrained from any consideration of original public meaning.⁴⁶ Instead, the Court focused on the Fourteenth Amendment's function of limiting power to the states, and applied

41. Marshfield, *supra* note 34, at 226–27.

42. Westover, *supra* note 38, at 705, 725–29 ("Structural analysis is commonplace in the Supreme Court's separation of powers jurisprudence.").

43. See Eliza Batty, Note, *Justice Scalia: An Originalist's Non-Originalist Approach to Political Party Cases*, 102 TEX. L. REV. ONLINE 119, 120–21 (2023), <https://texaslawreview.org/justice-scalia-an-originalists-non-originalist-approach-to-political-party-cases/> [<https://perma.cc/D6PS-7GF2>] (noting that "[a]s an originalist, Scalia interpreted the Constitution by looking to the original meaning of the text," but arguing that Scalia abandoned this method "when writing on political parties and instead allowed his desire for party strength and cohesion to guide his judicial opinions"); David M. Zlotnick, *Justice Scalia and His Critics: An Exploration of Scalia's Fidelity to His Constitutional Methodology*, 48 EMORY L.J. 1377, 1388 (1999) ("Consistent with his underlying motivation, Scalia sees textualism both as a constitutionally mandated end in itself and as a means to restrict the judiciary to its proper role . . ."); Chase Wathen, Note, *Textualism Today: Scalia's Legacy and His Lasting Philosophy*, 76 U. MIA. L. REV. 864, 877 (2022) ("Due to his slot on the Supreme Court, Scalia remained textualism's ideological leader up until the time of his death . . ."); but see Gregory Bassham, *Justice Scalia's Equitable Constitution*, 33 J.C. & U.L. 143, 151 (2006) (arguing that while Scalia "is the 'real McCoy' in statutory interpretation," his "approach is markedly different" in matters of constitutional law).

44. See *Trump v. Anderson*, 601 U.S. 100 (2024).

45. Will Baude and Michael Stokes Paulsen—two prominent originalist scholars—got the ball rolling by arguing that Trump was ineligible for the presidency under an originalist reading of Section Three of the Fourteenth Amendment. See William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. PA. L. REV. 605 (2024); see also Hannah Demissie & Laura Gersony, *14th Amendment, Section 3: A New Legal Battle Against Trump Takes Shape*, ABC NEWS (Aug. 25, 2023, 5:08 PM), <https://abcnews.go.com/Politics/14th-amendment-section-3-new-legal-battle-trump/story?id=102547316> [<https://perma.cc/KU22-2L54>] (describing the origins of Fourteenth Amendment litigation regarding Trump's eligibility). From there, commentary and briefing involved frequent references to the Fourteenth Amendment's original meaning. See, e.g., Brief of Amici Curiae American Historians in Support of Respondents, *Trump v. Anderson*, No. 23-719, 2024 WL 382472 (Jan. 29, 2024); Brief of Constitutional Accountability Center as Amicus Curiae in Support of Respondents, *Trump v. Anderson*, No. 23-719, 2024 WL 457074 (Jan. 31, 2024) (focusing on the origins and drafting history of Section Three, as well as making similar arguments and citing Baude and Paulsen's work); Brief for Professors and Legal Scholars as Amici Curiae in Support of Neither Party, *Trump v. Anderson*, No. 23-719, 2024 WL 288275, at *22–26 (Jan. 18, 2024) (appealing to Nineteenth Century understandings of Section Three).

46. See generally *Anderson*, 601 U.S. 100.

that function to the question at hand to rule out an interpretation granting state actors the ability to deem presidential candidates ineligible for office.⁴⁷

While structuralism plays a noteworthy role in constitutional interpretation, its potential flexibility worries some critics.⁴⁸ Taken alone, structural interpretation holds the potential for wide-ranging and disruptive inferences and arguments.⁴⁹ This concern may prompt some to consider alternative modes of considering the broader constitution with additional guardrails to prevent confusion or manipulation. The intratextualist approach, which I discuss next, is one such alternative.

B. Intratextualism

Akhil Amar advocates an “intratextualist” approach to constitutional interpretation, in which an interpreter “tries to read a contested word or phrase that appears in the Constitution in light of another passage in the Constitution featuring the same (or a very similar) word or phrase.”⁵⁰ Intratextualism, Amar argues, is worthwhile because it “takes seriously the document as a whole rather than as a jumbled grab bag of assorted clauses,” as clause-bound textualists tend to do.⁵¹ Alternative theories like structuralism account for the Constitution’s whole, but fail to account for the Constitution’s written nature.⁵² Amar distinguishes his approach from structuralist argumentation, which he characterizes as focused “not on the words of the Constitution, but rather on the institutional arrangements implied or summoned into existence by the document.”⁵³ Instead, Intratextualism is the best of both worlds, drawing on text that is “easily accessible to layfolk,” while acknowledging the document as a whole.⁵⁴

Amar identifies several cases in which the Court has, at least in part, engaged in this intratextual analysis of constitutional provisions. In *McCulloch v. Maryland*, for example, Justice Marshall supported his permissive reading of “necessary and proper” by reference to Article I, Section Ten of the Constitution, which prohibits states from laying imposts or duties on imports and exports, “except what may be absolutely necessary for executing its inspection Laws”—a provision that Marshall uses to distinguish a more stringent, qualified variation of “necessary” from the unqualified “necessary” at issue.⁵⁵ This, Amar argues, is an instance of “using the Constitution as its own dictionary” and is “a classic example of intratextualism.”⁵⁶ Amar cites *Martin v. Hunter’s Lessee* as another example of intratextualist methodology, highlighting the Court’s comparison of different instances

47. See *id.* at 116–17.

48. See Manning, *supra* note 32.

49. Vince Blasi, *Creativity and Legitimacy in Constitutional Law*, 80 YALE L.J. 176, 183 (1970).

50. Amar, *supra* note 3, at 748.

51. *Id.* at 795.

52. *Id.* at 795–96.

53. *Id.* at 790.

54. *Id.* at 796.

55. *McCulloch v. Maryland*, 17 U.S. 316, 407, 414–15 (1819).

56. Amar, *supra* note 3, at 756–57.

of the phrase “shall be vested,” in deriving the scope of Article III’s Vesting Clause.⁵⁷

Intratextualism may seem a bit more theoretical and niche than structural interpretation. Still, it has some purchase among the courts and several Supreme Court Justices. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, dissented from the Court’s ruling that an Arizona ballot initiative creating an independent redistricting commission did not violate the Constitution’s Elections Clause.⁵⁸ Roberts argued that the Elections Clause’s use of “the Legislature,” unambiguously referred to state legislatures rather than an independent entity.⁵⁹ Advancing this argument (and citing Amar’s “Intratextualism” article), Roberts stated that “[w]hen seeking to discern the meaning of a word in the Constitution, there is no better dictionary than the rest of the Constitution itself. Our precedents new and old have employed this structural method of interpretation to read the Constitution in the manner it was drafted and ratified—as a unified, coherent whole.”⁶⁰

What precedents supported the intratextualist approach? Roberts led with a cite to both the majority opinion in *NLRB v. Noel Canning*⁶¹ and a citation to Scalia’s concurrence in judgment in that case.⁶² The *Noel Canning* majority citation didn’t involve intratextualism—rather, the Court employed reasoning from original intent, historical practice, and pragmatic considerations to conclude that recesses needed to be longer than ten days to trigger the Recess Appointments Clause.⁶³ Similarly, Scalia’s concurrence in judgment involved arguments from tradition and structural arguments, rather than an intratextualist examination of the Constitution’s text.⁶⁴ The next citation was *McCulloch*, which, as already discussed, is a classic case of structural interpretation.⁶⁵ The last case the Court cited was *Martin v. Hunter’s Lessee*, and is the closest case for an intratextualist opinion.⁶⁶

While the Supreme Court’s use of intratextualism is limited and imprecise, other courts recognize and employ the method as well. The Eleventh Circuit

57. Amar, *supra* note 3, at 756–57.

58. See *Ariz. State Legislature v. Ariz. Independent Redistricting Comm’n*, 576 U.S. 787, 813 (2015).

59. *Id.* at 829 (Roberts, C.J., dissenting).

60. *Id.*

61. See *NLRB v. Noel Canning*, 573 U.S. 513 (2014).

62. See *Ariz. State Legislature*, 576 U.S. at 829 (Roberts, C.J. dissenting).

63. See *Noel Canning*, 573 U.S. at 535–38.

64. See *id.* at 597–601 (Scalia, J., concurring in judgment).

65. See *McCulloch v. Maryland*, 17 U.S. 316, 414–15 (1819). To Roberts’s credit, the cited excerpt does contain a remark that the word “necessary” in the Necessary and Proper Clause “is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.” *Id.* at 415. Still, the thrust of the cited excerpt is structural—emphasizing the purpose of the Constitution to persist through unforeseen crises, and the need for interpretations that permit the flexibility necessary to achieve this function.

66. See *Martin v. Hunter’s Lessee*, 14 U.S. 304 (1816).

applied intratextualist analysis when considering the scope of the right to vote, considering the Twenty-Fourth Amendment's meaning in light of the language used in the Fifteenth and Nineteenth Amendments.⁶⁷ Intratextualist analysis (along with other methods) played a role in the Tenth Circuit's determination that SEC Administrative Law Judges were "inferior officers" under the Appointments Clause.⁶⁸ In the statutory context, federal courts of appeal employ intratextualist interpretation to compare the elements of crimes and determine mens rea requirements,⁶⁹ to evaluate the existence of ambiguity in statutory text,⁷⁰ and to determine jurisdiction over certain statutory causes of action.⁷¹

Intratextualism shifts from the high-level considerations of the functions and ends of structural analysis toward a heavily text-centric approach to reading beyond particular constitutional clauses. The method has the potential to illuminate, particularly when it involves terms that recur throughout multiple constitutional rights and provisions.⁷² Yet its focus on recurring or repeated terms and phrases is a limitation that distinguishes it from a more holistic treatment of constitutional text.

C. Holistic Interpretation

A holistic approach to interpretation reads a constitutional term or provision in light of text elsewhere in the document. Holistic interpretation may take a broad form, in which interpreters consider the Constitution as a whole and interpret the provision at issue with reference to the entire document. Alternatively, versions of holistic interpretation may urge the consideration of narrow or qualified contexts, such as the entirety of a constitutional amendment in which a term or phrase appears, the whole of an article, or other provisions dealing with similar subject matter.⁷³

Many who discuss constitutional interpretation acknowledge the role that context plays. Holistic interpretation is a version of what linguists call "pragmatics," or what Lawrence Solum labels, "contextual enrichment"—the consideration of the "contribution that context makes to communicative content."⁷⁴ Potential

67. See *Jones v. Governor of Florida*, 975 F.3d 1016, 1041–42 (11th Cir. 2020).

68. See *Bandimere v. Securities & Exchange Commission*, 844 F.3d 1168, 1173 n.7, 1179 (10th Cir. 2016).

69. See *United States v. Bruguier*, 735 F.3d 754, 759 (8th Cir. 2013).

70. See *Husic v. Holder*, 776 F.3d 59, 65–66 (2d Cir. 2015) (considering and rejecting intratextualist arguments that a statute was ambiguous).

71. *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 451 (7th Cir. 2005).

72. See generally Gerald S. Dickinson, *Intratextual and Intradoctrinal Dimensions of the Constitutional Home*, 15 DUKE J. CONST. L. & PUB. POL'Y 291 (2020) (applying intratextualism alongside an intradoctrinal approach to analyze the recurrence of references to the home in constitutional provisions and drawing inferences from this methodology).

73. See *infra* section III.B (discussing these variations).

74. Lawrence B. Solum, *Originalism and the Unwritten Constitution*, 2013 U. ILL. L. REV. 1935, 1939 (2013); Victoria Nourse, *Picking and Choosing Text: Lessons for Statutory Interpretation from the Philosophy of Language*, 69 FLA. L. REV. 1409, 1415–20 (2017) (describing pragmatic enrichment and discussing examples); Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, 1990 Wis.

context that interpreters might consider can be broad, and might consist of drafters' intentions, relevant facts and values, drafting history, and shared assumptions of the drafters and readers.⁷⁵ Solum acknowledges that "the whole of the constitutional text is indisputably part of" the publicly available context that enriches the Constitution's meaning.⁷⁶

Holistic interpretation focuses on that indisputable component of a provision's context—the rest of the Constitution's text. Under a holistic approach, interpreters consider other provisions of the Constitution and how they bear on the interpretation of the word or provision at issue. The implications of the textual context vary. Interpreters may consider how separate, specific clauses might guide the interpretation of broader provisions addressing related subjects, whether a separate provision clarifies what might otherwise be an ambiguous term or phrase in the provision at issue, or whether one interpretation of a constitutional clause might be inconsistent with a separate constitutional provision.⁷⁷

I am not the first to identify or advocate for a holistic approach to constitutional interpretation. Michael Dorf identifies the method of holistic interpretation, which he summarizes as: "Don't just read each clause in isolation; see the document as a whole; understand how its various provisions fit together."⁷⁸ Dorf situates this approach alongside "a conventional principle of textual construction that words are to be interpreted in accordance with their context," acknowledging that "holism-as-sophisticated-textualism makes a great deal of common sense."⁷⁹ Dorf applies holistic methodology elsewhere in his work—using it, alongside structuralism and intratextualism, to argue for a broader, stronger, and more coherent account of Fourteenth Amendment protections against "discrimination based on religion, race, color, previous condition of servitude, and sex"⁸⁰ Elsewhere, Dorf and Laurence Tribe appeal to holistic reasoning to criticize tendencies toward "dis-integration" in which interpreters fail to recognize that the Constitution's "parts are linked into a whole—that it is *a Constitution*, and not merely an unconnected bunch of separate clauses and provisions with separate histories, that must be interpreted."⁸¹

L. Rev. 1179, 1194 (1990) (ARGUING THAT "MAXIMS OF STATUTORY INTERPRETATION CAN OFTEN BE UNDERSTOOD WITHIN THE CONCEPTUAL FRAMEWORK OF PRAGMATICS THEORY").

75. Lawrence B. Solum, *Pragmatics and Textualism*, 33 J. L. & POL'Y 2, 70–72 (2025) (describing "communicative context" and "policy context," and arguing that communicative context is the relevant context); Andrea Roth, *The Embarrassing Sixth Amendment*, 112 CAL. L. REV. 55, 57 (listing, as "sources that self-proclaimed textualists typically deem persuasive," examples "including the text itself, other constitutional provisions, similar language in state constitutions and colonial charters, Founding-era dictionaries, and Founding-era and common law English practices"); Chad Squitieri, *Who Determines Majorness?*, 44 HARV. J. L. & PUB. POL'Y 463, 483 (2021) ("[A]n objective reader utilizes familiar judicial tools to decipher objectified intent—legal precedent and treatises, for example, can provide the necessary context to understand a law's meaning.").

76. Solum, *supra* note 74, at 1964–65.

77. Examples of such approaches are set forth in more detail below. See *infra* Sections III.C & IV.A.

78. Dorf, *supra* note 7, at 835 (emphasis omitted).

79. *Id.*

80. Michael C. Dorf, *Equal Protection Incorporation*, 88 VA. L. REV. 951, 952–54 (2002).

81. LAURENCE H. TRIBE & MICHAEL C. DORF, ON READING THE CONSTITUTION 20–23 (1991).

Vicki Jackson advocates a holistic approach as well, though her variation of the method steers closer to Black's structuralism than Dorf's conception.⁸² Jackson defines "holism" as "an approach that seeks to take into account the basic structure and values of the Constitution in the interpretation of all of its provisions," which draws on "original or long-established understandings, . . . claims proceeding from precedent or practice . . . , or claims proceeding from the asserted clarity of meaning of constitutional text."⁸³ Applying this method, Jackson urges greater attention to "values that are implicit in later enacted amendments," and that these values be prioritized over earlier values when in conflict.⁸⁴ Responding to concerns that this might be inconsistent with treating the Constitution as "a coherent structural whole," Jackson argues that coherence "is not the primary goal of a constitution," and that emphasizing more recent amendments' influence is more consistent with democracy.⁸⁵ Focusing more on these recent amendments "give[s] greater weight to the constitutional views and decisions of more contemporary supramajorities."⁸⁶ Additionally, reading these more recent amendments "as 'changing' the whole Constitution," coheres with the original Constitution, which "carried within it the seeds of a commitment to human equality, albeit as a subordinate rather than dominant theme."⁸⁷

Other work on constitutional interpretation recognizes the role that holistic consideration of the Constitution may play in resolving hard questions and enhancing individual rights protection. Madiba Dennie proposes an "inclusive constitutionalism" framework that "interprets the whole Constitution in light of the Reconstruction Amendments' promise to build a functioning multiracial democracy—an approach similar to Jackson's holistic methodology."⁸⁸ Michael Coenen's work on "combination analysis," in which courts combine multiple constitutional provisions to reach a conclusion, exemplifies a holistic approach to constitutional interpretation.⁸⁹ Coenen emphasizes the "unitary structure of the Constitution itself," arguing that if the Constitution is to be read as a single whole, interpreters ought to combine constitutional clauses rather than opting for "[r]igid clause specificity."⁹⁰ So too, do Kerry Abrams and Brandon Garrett, who recognize

82. Compare Jackson *supra* note 13, at 1281–82 (setting forth her definition of holism and indicating that she "rel[ies] primarily on Charles Black" to defend the method), with Dorf *supra* note 7, at 835–36 (distinguishing Black's structural methodology from interpretive methods that focus on the Constitution's text).

83. Jackson, *supra* note 13, at 1281.

84. *Id.* at 1284.

85. *Id.* at 1287–88.

86. *Id.* at 1290; see also Vicki C. Jackson, *Holistic Interpretation, Comparative Constitutionalism, and Fiss-ian Freedoms*, 58 U. MIA. L. REV. 265, 279–80 (2003).

87. Jackson, *supra* note 86, at 270–71.

88. MADIBA K. DENNIE, *THE ORIGINALISM TRAP: HOW EXTREMISTS STOLE THE CONSTITUTION AND HOW WE THE PEOPLE CAN TAKE IT BACK* 214 (2024).

89. See Coenen, *supra* note 12.

90. *Id.* at 1111.

“intersectional” rights claims in which multiple constitutional rights claims gain enhanced meaning when considered together.⁹¹

Holistic interpretation differs from both Black’s structuralist approach, and Amar’s intratextualism—though it involves elements of both. While commentators are often inclined to equate structuralist reasoning with textualist methodology, this doesn’t square with structuralism, which is less concerned with the text and more concerned about the functions and goals the text is meant to perform and achieve.⁹² Holistic interpretation is a variety of textualist interpretation, focusing on the text of the Constitution as a whole rather than the goals or functions of the document that structuralists prioritize, or the ends the document seeks to achieve.⁹³

At the same time, the holistic approach differs from Amar’s intratextualism in its broader treatment of context. Rather than looking to words that are identical or near-identical and deriving lessons from their use,⁹⁴ a holistic approach draws insight from the entirety of the textual context—including implications for interpretation drawn from terms that are nowhere near in meaning to the provision at issue. Amar himself distinguishes intratextualism from “holistic textualism,” which he acknowledges “invites readers to ponder connections between noncontiguous clauses that have no textual overlap, yet nevertheless cross-illuminate.”⁹⁵

To illustrate holistic interpretation’s variation from intratextualism and structuralist reasoning, consider the example of whether a state constitutional provision guaranteeing the protection of individual rights, including life, liberty, and property protects individuals from discrimination on the basis of their sexual orientation. A holistic argument against such protections may look to separate state constitutional provisions restricting the definition of marriage to the union between one man and one woman. How much protection can a document that restricts the rights of same-sex couples provide to individuals seeking protection from similar discrimination?

This instance is not purely structural, as it does not arise from a broader function or goal of government, nor from the unification of individual rights provisions. It is not intratextual, as it does not compare and contrast the usage of similar terms or phrases to derive the meaning of one from the other. Rather, it’s an approach that is similar to both of these methods, but distinct.

91. See Abrams & Garrett, *supra* note 13, at 1330–41.

92. Dorf, *supra* note 7, at 835 & n.10 (noting that “it would be a mistake to read Black’s *Structure and Relationship* as principally addressed to the structure of the Constitution and the relationship among its various provisions,” and identifying examples of scholars who cite Black’s work “as presenting an argument for holistic interpretation”).

93. See Colby, *supra* note 33, at 1313–14 (arguing that many instances of structural argument go beyond instances of “holistic textual analysis” that might be squared with originalist methodology).

94. See Amar, *supra* note 3, at 748.

95. *Id.* at 798.

The remainder of the Article builds on the work of those who've identified, defended, and applied variations of holistic analysis. While these scholars have drawn out some examples of Supreme Court cases applying holistic methodology to the United States Constitution, a broader view of the law reveals similar holistic methodology in the interpretation of other documents, including contracts, wills, deeds, judgments, statutes, and state constitutions. While these interpretive objects are different from the United States Constitution,⁹⁶ the prevalence of holistic methodology demonstrates that it is a tool with which courts and attorneys are familiar and able to apply in a wide range of circumstances. Additionally, instances of holistic interpretation—particularly those at the state constitutional level—provide illustrations and examples for judges who might otherwise be reluctant or confused to employ this interpretive method themselves. The next section sets forth the scope of holistic interpretation across legal doctrines, identifying variations of holistic interpretive methodology, and providing detailed examples of holistic interpretation at the federal and state constitutional levels.

III. HOLISTIC INTERPRETATION: CONTEXT, EXAMPLES, AND VARIATIONS

A. *Holistic Interpretation Elsewhere in the Law*

Holistic interpretation may be relatively rare in the Supreme Court's constitutional law jurisprudence, but it's a mainstay in numerous other areas of law. In cases involving disputes over contract interpretation, for example, courts frequently require that the contract be read as a whole when deriving the meaning of a disputed term or provision.⁹⁷ Some states have codified the requirement that contracts be interpreted in this holistic manner.⁹⁸

96. State constitutions, for example, consist of limitations rather than grants on powers—distinct from the federal Constitution's grant of powers to the federal government. G. Alan Tarr, *State Constitutional Design and State Constitutional Interpretation*, 72 MONT. L. REV. 7, 12–13 (2011). Accordingly, federally inspired approaches that contemplate the combined effect of individual rights provisions and constitutional grants of power would need to be modified accordingly if applied at the state level. See Coenen, *supra* note 12 (discussing the combined effect of government powers and rights provisions in the federal Constitution).

97. See, e.g., *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1044 (Del. 2023) (“We will read the contract as a whole and enforce the plain meaning of clear and unambiguous language.”) (internal quotation omitted); *Beal Sav. Bank v. Sommer*, 865 N.E.2d 1210, 1213–14 (N.Y. 2007) (“[A] contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible, it will be so interpreted as to give effect to its general purpose.”) (internal quotation omitted); *Herrington v. SSC Seneca Operating Company, LLC*, 866 S.E.2d 579, 581–82 (S.C. Ct. App. 2021) (“We are bound to interpret the agreement by looking at the entire agreement from beginning to end: precedent explains that when construing a contract, ‘all of its provisions should be considered, and one may not, by pointing out a single sentence or clause, create an ambiguity.’”) (quoting *Yaroborough v. Phoenix Mut. Life Ins. Co.*, 225 S.E.2d 344, 348 (S.C. 1976)); *Radliff v. Schmidt*, 532 P.3d 622, 625 (Wash. Ct. App. 2023) (“Ambiguity will not be read into a contract where it can reasonably be avoided by reading the contract as a whole.”).

98. See, e.g., CAL. CIV. CODE § 1641 (1872) (“The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.”); LA. CIV. CODE ANN. art. 2050 (1985) (“Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole.”); MONT. CODE ANN

The holistic approach often makes a difference. To take just one routine example, in *Sovereign Insurance Co. v. Texas Pipe Line Co.*, the Louisiana Supreme Court examined whether a contract between Texas Pipeline Company and Atlas Construction Company, Inc. required Atlas to provide for “indemnity against Texas’s strict liability to a third person under Civil Code art. 2317.”⁹⁹ The court noted that “such general terms must be interpreted to cover only those things it appears the parties intended to include,” but determined, based on the “contract as a whole,” that strict liability claims under the Article 2317 were included in the indemnity provision.¹⁰⁰ Specifically, the court highlighted other contractual provisions in which Atlas “represented that it had inspected the premises for hazardous conditions and had determined their nature and extent to its satisfaction,” and where “Atlas promised to take any measures necessary to adequately protect all persons and property from injury or loss arising out of the work and to maintain all passageways for the protection of persons and property required by any local conditions.”¹⁰¹ In doing so, Atlas exempted “only claims, causes of action and liability resulting ‘solely from [Texas’s] negligence.’”¹⁰² That contractual context led the court to conclude that “the contract as a whole indicates an intention to provide indemnity against Texas’s strict liability under article 2317.”¹⁰³

Other areas of law call for holistic readings, including those involving the interpretation of wills,¹⁰⁴ property deeds and covenants,¹⁰⁵ and judgments of courts.¹⁰⁶ In some states, the relevant context for holistic interpretation can be

§ 28-3-202 (2023) (“The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.”).

99. *Sovereign Ins. Co. v. Texas Pipe Line Co.*, 488 So.2d 982, 984 (La. 1986).

100. *Id.* at 984–85.

101. *Id.* at 985.

102. *Id.*

103. *Id.*

104. *See, e.g.*, *First Nat. Bank of Peoria v. Singer*, 549 N.E.2d 940, 941 (Ill. App. Ct. 1990) (“The intention of the testator or settlor is to be found from the wording of the document as a whole, giving each word meaning.”); *Dickinson v. Fueller*, 463 S.E.2d 127, 128 (Ga. 1995) (“In construing a will, the court is required to examine it as a whole and to search diligently for the intention of the testatrix.”); *Winkler v. Woodruff*, 182 A. 409, 411 (Del. 1935) (“Of course the doctrine of ejusdem generis as an aid to interpretation is always subordinate to the cardinal principle that a will is to be construed according to the intent of the testator as the same is gathered from the document as a whole.”).

105. *Collins v. Hall*, 453 P.3d 178, 187 (Alaska 2019) (“We apply a three-step analysis to interpret deeds. First, we look at the four corners of the document to see if it unambiguously presents the parties’ intent. We need go no further if the deed taken as a whole is open to only one reasonable interpretation.”) (internal quotations omitted); *Zabrucky v. McAdams*, 129 Cal. App. 4th 618, 622 (2005) (when interpreting restrictive covenants, courts must determine the intention of the parties “from the document as a whole, and if possible still give effect to every part”) (internal quotations omitted); *Purlo Corp. v. 3925 Woodward Ave.*, 67 N.W.2d 684, 686 (Mich. 1954) (“[I]n arriving at the intent of the parties as expressed in the [deed of conveyance] consideration must be given to the whole and to each and every part of it.”).

106. *See, e.g.*, *White v. Graham*, 325 S.E.2d 497, 501 (N.C. 1985) (“Judgments must be interpreted like other written documents, not by [focusing] on isolated parts, but as a whole, in light of practicality and the intention of the court.”); *In re Marriage of Patterson and Kanaga*, 136 P.3d 1177, 1181 (Or. Ct. App. 2006) (“A marital settlement agreement incorporated into a dissolution judgment is interpreted in the same manner as other contractual provisions, that is, by examining the text within the context of the

quite expansive. For example, Chapter One of Delaware’s statutory scheme governing corporations is deemed to “be a part of the charter or certificate of incorporation of every corporation except so far as the same are inapplicable and inappropriate to the objects of the corporation.”¹⁰⁷ Delaware’s Court of Chancery has applied this statute to require the construction of certificates of incorporation to require attention “not only to the single phrase,” but “also to the rest of [the certificate’s article at issue], the rest of the Certificate,” the [Delaware General Corporation Law], the decisional case law, and the interpretive principles that apply at each level.”¹⁰⁸

In statutory interpretation, courts frequently urge a holistic methodology.¹⁰⁹ Statutory schemes, particularly those with interrelated titles, often must be construed holistically to understand what the law requires.¹¹⁰ The Supreme Court urges a holistic interpretation of statutory schemes in what courts and commentators describe as the “whole code” rule or canon.¹¹¹ Anita Krishnakumar describes it as “an extension” of a more modest form of holistic interpretation, “the whole act rule, which directs interpreters to construe individual provisions of a statute in light of the whole statute of which they are a part.”¹¹²

whole document to determine the parties’ intentions; examining extrinsic evidence of the parties’ intentions if text and context are ambiguous; and, as a last resort, employing maxims of construction.”) (internal citations omitted).

107. 8 DEL. CODE § 394.

108. *Gunderson v. Trade Desk, Inc.*, 326 A. 3d 1264, 1280–81 (Del. Ch. 2024).

109. *See, e.g.*, *State v. Schulz*, 264 P.3d 970, 973 (Idaho 2011) (“Provisions should not be read in isolation but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings.”); *Kollodge v. F. & L. Appliances, Inc.*, 80 N.W.2d 62, 64 (Minn. 1956) (“It is a cardinal rule of statutory construction that a particular provision of a statute cannot be read out of context but must be taken together with other related provisions to determine its meaning.”); *DiProspero v. Penn.*, 874 A.2d 1039, 1048 (N.J. 2005) (“We ascribe to the statutory words their ordinary meaning and significance and read them in context with related provisions so as to give sense to the legislation as a whole.”) (internal citations omitted).

110. *See, e.g.*, *Newell v. People ex rel. Phelps*, 7 N.Y. 9, 74–75 (1852) (“Surely these sections must be construed together; if so, it is impossible to maintain that what is not only allowed but explicitly directed to be done in one section, is forbidden by another.”).

111. Anita S. Krishnakumar, *Cracking the Whole Code Rule*, 96 N.Y.U. L. REV. 76, 77 (2021); *see also* Amy Semet, *An Empirical Examination of Agency Statutory Interpretation*, 103 MINN. L. REV. 2255, 2260–61 (2019) (critiquing the application of the whole code rule “in the agency context, where a disjointed group of statutes, regulations, and caselaw inform how statutes are implemented,” but recognizing that the canon is “commonly employed by courts in interpreting statutes”). To be sure, not all courts are eager to adopt this approach to statutory interpretation. *See, e.g.*, *United States v. Harmon*, 474 F. Supp. 3d 76, 91 (D.D.C. 2020) (acknowledging the whole code canon, but stating that “this precept usually applies where the statute at issue contains a definition, not whenever a relevant term is defined somewhere in the governing code”); *K.L. v. R.I. Island Bd. of Educ.*, 907 F.3d 639, 646 (1st Cir. 2018) (considering and rejecting arguments from the whole code canon of statutory interpretation, reasoning that the canon “reflects a fanciful version of the legislative drafting process” and that “there is little evidence that treating the United States Code as a single body of consistent law ‘reflects how Congress drafts or even how it tries to draft’ legislation”) (quoting Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside – An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 936 (2013)).

112. Krishnakumar, *supra* note 111, at 85.

State courts' calls for holistic statutory interpretation often extend to state constitutional law, as state courts frequently proclaim that state constitutions are to be interpreted in the same manner as statutes.¹¹³ Other state courts explicitly apply the principle of holistic interpretation to both statutory and state constitutional interpretation.¹¹⁴ While one might be tempted toward a clause-bound approach to the interpretation of state constitutions, state constitutional scholars urge against this.¹¹⁵

Indeed, in the constitutional context, state courts often urge that state constitutional provisions be interpreted in light of the whole constitution. Jessica Bulman-Pozen and Miriam Seifter claim that all state supreme courts "purport to interpret their state constitutions as a whole, rather than clause by clause."¹¹⁶ This may be a slight overstatement—at least based on the cases upon which Bulman-Pozen and Seifter rely. Some of the cases cited stand for a narrower version of holistic interpretation than interpreting the constitution as a whole. Yet most of these cases involve variations on holistic interpretation, even if the approach isn't as broad as calling for consideration of the whole constitution.

Kansas' and Mississippi's supreme courts, for example, endorse interpretations that achieve harmony and avoid conflict between provisions.¹¹⁷ While this approach to interpretation requires attention to context, it does not appear to be

113. See, e.g., *Contoocook Valley Sch. Dist. v. State*, No. 2024-0121, 2025 WL 1802543, at *20 (N.H. July 1, 2025) (Countway, J., concurring in part and dissenting in part) ("To determine whether a statute is susceptible to a constitutional construction, we apply our traditional principles of statutory interpretation and consider the intent of the legislature 'as expressed in the words of the statute considered as a whole.'") (quoting *Petition of Carrier*, 82 A.3d 917, 920 (N.H. 2013)); *Payne v. Sec'y of State*, 237 A.3d 870, 876 (Me. 2020) ("Because the same principles employed in the construction of statutory language hold true in the construction of a constitutional provision, we apply the plain language of the constitutional provision if the language is unambiguous.") (internal quotation omitted); *State v. Paradis*, 10 A.3d 695, 696 (Me. 2010) ("In interpreting the meaning of the gross sexual assault statute, we look first to the 'plain meaning of the statutory language in the context of the whole statutory scheme.'") (quoting *State v. Stevens*, 912 A.2d 1229, 1231 (Me. 2007)).

114. See *Collie v. Comm'rs of Franklin Cnty.*, 59 S.E. 44, 47 (N.C. 1907) ("It is a well-recognized rule in the interpretation of [c]onstitutions, and the same principle extends to statutes and contracts, that, in case of any ambiguity, the whole instrument must be examined and considered, in order to determine the meaning and legal effect of any part of it, and the construction should be such as to give effect to the entire instrument, and not to raise any conflict between its several provisions, if this can possibly be avoided.").

115. See G. Alan Tarr, *Constitutional Theory and State Constitutional Interpretation*, 22 RUTGERS L.J. 841, 858 (1991) ("[O]ne must avoid a 'clause-bound interpretivism' in state constitutional interpretation, even though the practice of comparing state and federal provisions moves one in that direction.").

116. Bulman-Pozen & Seifter, *supra* note 2, at 1891.

117. See *State ex rel. Arn v. State Comm'n of Revenue & Tax'n*, 181 P.2d 532, 540 (Kan. 1947) (stating that a state constitutional provision must be "interpreted in harmony" with other provisions of the constitution, as well as with attention to the principle that state constitutions function to limit, rather than grant, power to state governments); *Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning*, 613 So. 2d 872, 876 (Miss. 1993) (stating that "provisions of the constitution should be read 'so that each is given a maximum effect and a meaning in harmony with that of each other'" and that "[w]here conflict may appear to exist, specific articles . . . control over general provisions") (quoting *Dye v. State ex rel. Hale*, 507 So. 2d 332, 342 (Miss. 1987)).

the same as considering the document as a whole, which may involve more considerations between harmony and conflict avoidance.¹¹⁸ Washington's supreme court urges courts to avoid construing constitutional provisions in a manner that renders clauses, sentences, or words superfluous—a provision-specific admonition that doesn't bear on holistic interpretation.¹¹⁹ Colorado's supreme court calls for the interpretation of *provisions*, rather than the entire constitution as a whole.¹²⁰ Vermont's supreme court applies a similar holistic provision analysis, requiring the consideration of other provisions “governing the same subject matter.”¹²¹ Ohio's supreme court engages in a broad *interpretation* of a provision, but says nothing about considering other provisions of the constitution,¹²² though elsewhere the court urges a harmonious approach to interpretation similar to Kansas and Mississippi.¹²³

Other state courts appear to urge the consideration of the whole constitution, but their formulations of the method raise questions. Bulman-Pozen and Seifter cite an Arkansas Supreme Court case urging that “the Arkansas Constitution must be considered as a whole, and every provision must be read in light of other provisions relating to the same subject matter.”¹²⁴ While this statement includes language purporting to interpret the whole constitution, it appears to be immediately limited by a requirement that this holistic analysis incorporate “other provisions relating to the same subject matter.”¹²⁵ As for Connecticut, while the Supreme Court of Connecticut in *Sheff v. O'Neill* interpreted two state constitutional provisions, it did so only after a lengthy explanation of why the provisions were relevantly related—suggesting a qualified approach to holistic interpretation.¹²⁶

118. See *infra* Section III.B.

119. See *Grp. Health Co-Op of Puget Sound v. King Cnty. Medical Soc'y.*, 237 P.2d 737, 764 (Wash. 1951). Elsewhere, the court's admonition against interpretations that render words or provisions void appears to apply on a whole-constitutional level—which, while broader than a provision-specific rule, is still limited in scope by the continued sole focus on avoiding superfluity. See *In re Sargent*, 499 P.3d 241, 245 (Wash. 2021) (“We interpret both statutes and the constitution so that no portion is rendered superfluous.”).

120. See *Bruce v. City of Colo. Springs*, 129 P.3d 988, 992 (Colo. 2006) (“Where ambiguities exist, we interpret constitutional provisions as a whole and attempt to harmonize all of the contained provisions.”). Elsewhere, the Colorado Supreme Court tends to endorse a similarly limited holistic approach, urging that when an amendment's interpretation is at issue, the amendment be interpreted as a whole, with references to other provisions limited to maintaining harmony and avoiding conflict. See, e.g., *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996) (“Courts should consider the amendment as a whole and, when possible, adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict between such provisions.”).

121. *State v. Lohr*, 236 A.3d 1277, 1281 (Vt. 2020).

122. *City of Cleveland v. State*, 136 N.E.3d 466, 475 (Ohio 2019) (“We must give effect to the broader language the framers used, not narrow it under the guise of constitutional construction. And tellingly, it has long been recognized that a constitutional grant of authority to provide for the ‘general welfare’ represents a broad grant of discretion to the legislature.”).

123. See *Froelich v. City of Cleveland*, 124 N.E. 212, 215–16 (Ohio 1919).

124. *Richardson v. Martin*, 444 S.W.3d 855, 858 (Ark. 2014).

125. *Id.*

126. See *Sheff v. O'Neill*, 678 A.2d 1267, 1281 (Conn. 1996).

Despite these departures, the vast majority of state supreme courts espouse a holistic approach and explicitly call for interpreting the state constitution as a whole.¹²⁷ And even courts that do not go so far as to call for the consideration of the whole constitution to inform the meaning of particular provisions tend to at least urge narrower variations of holistic interpretation. These variations include rules that require the consideration of certain constitutional context or other provisions that might conflict with a given interpretation. The next subsection explores these alternate approaches and argues that they are variations of holistic interpretation that are appropriately considered alongside the approach of considering the constitution as a whole.

B. Variations of Holistic Interpretation

Requiring that a constitution be read as a whole is one variety of holistic interpretation. But there are variations of the methodology that aren't as broad yet still require the consideration of broader textual context. These variations are often on display at the state level—where courts are far more likely to espouse a holistic approach.

One variety of holistic interpretation involves courts calling for the interpretation of a provision in light of a defined or limited constitutional context. States like Arkansas and Vermont, for example, require that constitutional provisions be read in light of other provisions concerning the same subject matter.¹²⁸ California's Supreme Court sometimes requires that constitutional provisions be read in light of other sections of the same article—stopping short of calling for consideration of the constitution as a whole.¹²⁹ Similarly, Colorado's Supreme Court calls for the holistic consideration of provisions—urging attention to the entire provision at issue, but stopping short of calling for comparisons with other provisions in the constitution.¹³⁰ Colorado courts also call for the consideration of specific amendments as a whole, often emphasizing the further requirement that such a holistic interpretation be harmonious with other constitutional provisions.¹³¹

127. See Smith, *supra* note 22, at 643–47 (tallying up forty states that call for interpreting the state constitution as a whole).

128. See *Gatzke v. Weiss*, 289 S.W.3d 455, 458 (Ark. 2008) (“The Arkansas Constitution must be considered as whole, and every provision must be read in light of other provisions relating to the same subject matter.”); *State v. Lohr*, 236 A.3d 1277, 1281 (Vt. 2020) (“[W]e do not read sentences or phrases in isolation; instead, we examine the whole and every part of a provision, together with others governing the same subject matter, as parts of a system.”) (internal quotation omitted).

129. See, e.g., *Mendoza v. State of California*, 149 Cal. App. 4th 1034, 1051 (2007) (“[W]e are to read sections of the same article of the Constitution not in isolation, but together as a whole.”) (internal quotations omitted); *Lungren v. Davis*, 285 Cal. Rptr. 777, 789 (Cal. Ct. App. 1991) (“There can be no question then that words and phrases within article VI of the Constitution must be interpreted in light of other provisions of that article.”).

130. See *Bruce v. City of Colorado Springs*, 129 P.3d 988, 992 (Colo. 2006) (“Where ambiguities exist, we interpret constitutional provisions as a whole and attempt to harmonize all of the contained provisions.”).

131. See *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996) (“Courts should consider the amendment as a whole and, when possible, adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict between such provisions.”).

The rejection of the clause-bound approach and the requirement that courts consider broader context (albeit not the whole constitution), makes this a version of holistic interpretation. But the limitation on relevant contextual consideration renders this method distinct from whole-constitution holistic interpretation. These formulations resemble what Akhil Amar describes as “paragraphism,” where an interpreter considers adjoining clauses that might “have no linguistic overlap,” but which “often deal with related subjects” and therefore inform one another’s interpretation.¹³²

Another related approach is the requirement that provisions be construed in a manner that is in harmony with other constitutional provisions. This is a limited version of holistic interpretation, as courts urging harmonious interpretation use context to avoid contradictions or conflict but stop short of espousing the use of context to clarify broad or ambiguous provisions. State supreme courts that call for harmonious interpretation include Colorado, Kansas, Mississippi, Ohio, and Washington.¹³³

State courts’ emphasis on harmonious constitutional interpretation is unsurprising when one considers the typical length and complexity of state constitutions. State constitutions are both lengthy (with the fifty states’ constitutions reaching a median length of 27,000 words) and frequently amended.¹³⁴ These constitutions “are replete with ‘constitutional legislation,’ provisions that in their length and detail are indistinguishable from statutes but that nonetheless have been elevated to constitutional status.”¹³⁵

State constitutions’ length, complexity, and frequent amendment require courts to take a more holistic approach to the constitutional text to avoid contradictory interpretations.¹³⁶ Holistic interpretation may also be necessary to give effect to state constitutional amendments in the absence of express repeals of particular constitutional sections or articles.¹³⁷ As the Missouri Supreme Court observed when considering a challenge to an amendment initiative,

132. See Amar, *supra* note 3, at 796.

133. See *Zaner*, 917 P.2d at 283 (“Courts should consider the amendment as a whole and, when possible, adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict between such provisions.”); *State ex rel. Arn v. State Comm’n of Revenue & Taxation*, 181 P.2d 532, 540 (Kan. 1947) (requiring that state constitutional provision “be interpreted in harmony with not only other provisions of the Constitution, but with the fundamental, inherent power of the state”); *Dye v. State ex rel. Hale*, 507 So. 2d 332, 342 (Miss. 1987) (“[C]onstitutional provisions should be read so that each is given maximum effect and a meaning in harmony with that of each other.”); *Froelich v. City of Cleveland*, 124 N.E. 212, 215–16 (Ohio 1919) (rejecting a construction that would make the provision “self-contradictory and self-destructive” and calling for interpretations that allow provisions to cohere rather than conflict); *In re Sargent*, 499 P.3d 241, 245 (Wash. 2021) (“We interpret both statutes and the constitution so that no portion is rendered superfluous.”).

134. ADAM R. BROWN, *THE DEAD HAND’S GRIP: HOW LONG CONSTITUTIONS BIND STATES* 14 (2023) (noting the median length and comparing the median number of amendments in the last twenty years (eighteen) with the US Constitution, which has been amended fifteen times in the last two-hundred years).

135. G. ALAN TARR, *UNDERSTANDING STATE CONSTITUTIONS* 9 (1998).

136. See *infra* Section IV.C.

137. See *People ex rel. Carlson v. City Council of City & County of Denver*, 153 P. 690, 693 (Colo. 1915) (“There is no provision of the Constitution, nor rule of law, which requires an amendment to refer to, or in express terms repeal, any particular section or article; and, when such amendment unmistakably revises all former provisions on the subject it embraces, and is evidently intended as a substitute for

Nearly every case involving one constitutional provision also involves one or more others. The business of harmonizing such provisions and giving each of them all the effect the people intended them to have is the business of courts in general and this Court in particular. Such analyses are performed with extreme care and, one hopes, with delicate precision.¹³⁸

Harmonious interpretation is distinct from an open-ended methodology that calls for interpretation of the constitution as a whole, because harmonious interpretation considers other provisions for the distinct purpose of identifying potential conflicts or inconsistencies. Accordingly, courts calling for consideration of other constitutional provisions to ensure that the provisions work in harmony, or to avoid rendering certain provision or terms superfluous, are engaged in one application of a broader holistic interpretive method. This approach is an example of holistic interpretation, even though not all instances of holistic interpretation must implicate the question of whether provisions conflict.

C. Examples of Holistic Constitutional Interpretation

The United States Supreme Court tends toward a clause-bound approach when interpreting the Constitution—focusing on single provisions or even individual words within those provisions, rather than considering the Constitution as a whole.¹³⁹ When the Court steps back from clause-bound interpretation, it often applies a structural approach—focusing on the function of the Constitution, or certain provisions of the Constitution.¹⁴⁰ Still, there are instances in which the Court has engaged in what might be rightly described as holistic interpretation.

Perhaps the most prominent example of holistic interpretation is the Court's approach in *Griswold v. Connecticut*, in which the Court evaluated the constitutionality of state prohibition on the use of contraceptives, as well as actions that aid or assist individuals in obtaining and using contraceptives.¹⁴¹ Arguing that “specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance,” Justice Douglas walked through a variety of constitutional rights that, he concluded, supported a right to privacy:

Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers ‘in any house’

them, although it contains no express words to that effect, it operates as a repeal of the former on the same subject”); *People ex rel. Williams Engineering & Contracting Co. v. Metz*, 85 N.E. 1070, 1073 (N.Y. 1908) (“In construing a constitution all its provisions relating directly or indirectly to the same subject must be read together, and any amendment in conflict with prior provisions must control, as it is the latest expression of the people.”).

138. See *Coleman v. Ashcroft*, 696 S.W.3d 347, 362 (Mo. 2024).

139. *Bulman-Pozen & Seifter*, *supra* note 2, at 1882–83.

140. See *supra*, Section II.A.

141. See *Griswold v. Connecticut*, 381 U.S. 479, 480 (1965).

in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the ‘right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’ The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: ‘The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.’¹⁴²

This approach (albeit a controversial one)¹⁴³ is an example of holistic textualism, as it draws on the text of multiple constitutional provisions to advance a claim, yet does not cabin itself to examples that involve similar or identical language as an intratextualist method might.¹⁴⁴

The Court also takes a holistic approach when it combines constitutional provisions to reach conclusions—often about the scope or existence of claimed individual rights. Michael Coenen describes some of these instances in the context of his discussion on “combination analysis,” in which courts combine rights claims together to reach distinct conclusions (think equal protection and substantive due process supporting a right to marry in *Obergefell v. Hodges*).¹⁴⁵ Coenen also flags instances like *United States v. Windsor*, where combined considerations of rights (equal protection and substantive due process) combine with a lack of federal power to invalidate parts of the Defense of Marriage Act,¹⁴⁶ as well as combining multiple powers provisions to support a particular exercise of government power (think Chief Justice Marshall’s references to multiple powers of Congress to support the conclusion that Congress had the power to create a national bank).¹⁴⁷

Similarly, Kerry Abrams and Brandon Garrett catalog examples of intersectional instances of “cumulative constitutional rights,” in which the Supreme Court combines constitutional rights to derive enhanced protections in specific cases.¹⁴⁸ Examples of such intersectional, cumulative protections include equal protection combined with substantive due process to protect marriage rights,¹⁴⁹ and combining equal protection and procedural due process to hold unconstitutional the revocation of probation for failure to pay fines and restitution absent findings of the defendant’s responsibility for the failure and the consideration of alternative penalties.¹⁵⁰

142. *Id.* at 484.

143. See Steven G. Calabresi & Justin Braga, *Judge Robert H. Bork and Professor Bruce Ackerman: An Essay on the Tempting of America*, 13 AVE MARIA L. REV. 47, 54 (2015) (“Justice Douglas’s majority opinion in *Griswold v. Connecticut* has long been the subject of derisive laughter among those who read it.”).

144. See Amar, *supra* note 3, at 797 (describing Douglas’s reasoning in *Griswold* as an attempt at “holistic textualism”).

145. See Coenen, *supra* note 12, at 1078–79.

146. *Id.* at 1084–85.

147. *Id.* at 1086.

148. See Abrams & Garrett, *supra* note 13.

149. *Id.* at 1331–34 (including *Obergefell* and *Loving v. Virginia* as examples of this analysis).

150. *Id.* at 1345 (discussing *Bearden v. Georgia*, 461 U.S. 660 (1983)).

State constitutional cases are conspicuously absent from the literature on holistic interpretation. Yet holistic interpretation happens frequently at the state level. As discussed already, most state courts urge that state constitutions be interpreted as a whole,¹⁵¹ or that interpreters consider related or potentially conflicting provisions when interpreting the state constitution.¹⁵² The length and complexity of state constitutions, coupled with the existence of provisions without analogs in the United States Constitution, create a fruitful environment for holistic analysis.

In *State v. Kelliher*, for example, the North Carolina Supreme Court ruled that sentencing juveniles to life in prison without parole violated the state constitution.¹⁵³ The court enhanced its reading of North Carolina's Eighth Amendment analog¹⁵⁴ by considering "features unique to the North Carolina Constitution," which supported its conclusion that the state constitution provided greater protection than the Eighth Amendment.¹⁵⁵ The court noted that North Carolina's constitution required that the object of punishment include not only "satisfy[ing] justice, but also . . . reform[ing] the offender," and that sentencing juveniles to life in prison without parole "unjustifiably disavows the goal of reform."¹⁵⁶ The court also drew on North Carolina's constitutional guarantees of education, noting that even those children who commit homicide may be educated and reformed, and that it was therefore "cruel to sentence a juvenile who has the potential to be rehabilitated to a sentence which deprives him or her of a meaningful opportunity to reenter society and contribute to this state."¹⁵⁷ Both of these arguments are holistic, enhancing the force of North Carolina's constitutional prohibition of cruel or unusual punishment by reference to other state constitutional provisions.

Holistic reading of state constitutions may also lead courts to reject individual rights claims. In *State v. Williams*, for example, a defendant argued that the admission of evidence of prior criminal convictions violated his due process rights.¹⁵⁸ The court rejected his state constitutional claim, noting that Article One, Section 18(c) of Missouri's constitution permitted the use of prior sexual misconduct evidence to demonstrate the defendant's propensity to commit the charged offense.¹⁵⁹ The court critiqued the defendant's state constitutional claim, questioning "how one provision of the Missouri Constitution can violate another provision of the same constitution" and stating that the court "must attempt to harmonize the provisions, giving effect to each."¹⁶⁰

151. See *supra* Section III.A.

152. See *supra* Section III.B.

153. See *State v. Kelliher*, 873 S.E.2d 366, 393–94 (N.C. 2022).

154. N.C. CONST. art. I, § 27 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.")

155. See *Kelliher*, 873 S.E.2d at 385–86.

156. *Id.* at 386.

157. *Id.* at 386–87.

158. See *State v. Williams*, 548 S.W.3d 275, 280 (Mo. 2018).

159. *Id.*; see also MO. CONST. art. I, § 18(c).

160. See *Williams*, 548 S.W.3d at 280 n.5.

Holistic interpretation isn't only reserved for questions of individual rights. Questions of government structure and powers also prompt holistic interpretation—particularly in state constitutions with complex and interrelated provisions related to state power. In *In re Application of State to Issue Bonds to Fund Indebtedness*, Oklahoma's Supreme Court addressed a challenge to the issuance of bonds in which the protestants argued that the state lacked funds to issue bonds, and that doing so would run afoul of the Oklahoma Constitution's balanced budget provision.¹⁶¹ The court characterized the protest as stating that "all the outstanding warrants of the state, no matter for what purpose issued, in excess of the limit named [in the balanced budget provision], are void, and that, therefore, the state, not owing them, cannot issue bonds to pay them, as that would be the creation of a debt in violation of said limitation."¹⁶²

In addressing the challenge, the court began with a structural approach. It acknowledged that the section, "read alone, and without considering other sections of the Constitution, is capable of such a sweeping construction," but rejected such a reading, arguing that the provision must be construed alongside other state constitutional provisions guaranteeing certain ends of government and other functions of government.¹⁶³ A reading that would prohibit all other government functions because it would violate the balanced budget requirement, would "subordinate these other sections of the Constitution to this one."¹⁶⁴

The court then turned to an intratextualist analysis, which it mixed with a comparative common law approach—drawing in precedent from different states regarding municipalities' ability to issue bonds despite balanced budget restrictions.¹⁶⁵ To justify its reliance on these cases—which involved different provisions in different states—the court turned to intratextualism, noting that the language of those provisions "is quite as absolute and sweeping as is that of the section of our Constitution under consideration."¹⁶⁶

In a subsequent case involving the same dispute, Special Judge¹⁶⁷ Robertson countered the court's structural and intratextual reasoning with a holistic reading of the provisions at issue. Robertson read the balanced budget requirement alongside two separate sections, which gave the state authority to incur certain additional debts up to \$400,000, and which allowed debts "without limit for the purpose of defraying expenses incident to war, repel invasion, and suppress insurrection."¹⁶⁸ Robertson relied extensively on reasoning

161. See *In re Application of State to Issue Bonds to Fund Indebtedness*, 127 P.1065, 1065 (Okla. 1912).

162. *Id.* at 1066.

163. *Id.*

164. *Id.* at 1067.

165. *Id.* at 1067–68.

166. *Id.* at 1067.

167. Special Judge Robertson was appointed to sit in place of one of three disqualified state supreme court justices. See *In re Application of State to Issue Bonds to Fund Indebtedness*, 136 P. 1104, 1108 (Okla. 1913).

168. *Id.* at 1109 (Robertson, J., dissenting).

quoted from John B. Harrison,¹⁶⁹ who concluded that several possible outcomes were possible: (1) the bonds were a debt and needed be approved by the legislature in accordance with the balanced budget provision; (2) that the bonds were not a debt, essentially allowing the state to incur an unlimited deficit for any reason through issuing bonds; or (3) that the sections, “construed together, permitted “casual deficits . . . up to the amount of \$400,000” through the issuance of bonds, and any further bond issuances to require approval by the legislature pursuant to the balanced budget provision.¹⁷⁰ Harrison concluded that the third holistic reading was the “only reasonable construction to be placed upon the constitutional provisions under consideration,” arguing that a reading of all provisions revealed “one unbroken chain through which the entire revenue system is linked together as a comprehensible whole”: that of requiring a popular vote to approve exceeding fixed limitations on the raising of revenue.¹⁷¹ In Harrison’s (and, by extension, Robertson’s) view, his reading was the only one consistent with all of the relevant constitutional provisions, which he flagged as “peculiarly and cautiously worded.”¹⁷²

Oklahoma’s bond issuance cases demonstrate how holistic interpretation functions in the context of both state power and revenue raising. It also illustrates how holistic interpretation might work alongside or against other, similar methods such as structuralism and intratextualism. There, structuralist and intratextualist arguments won out against holistic analysis. But all these arguments took care to situate themselves in the broader context of the state constitution—bringing perspective to what otherwise might be an overly technical and cabined discussion.

IV. IMPLICATIONS OF HOLISTIC INTERPRETATION

Up to this point, I’ve been concerned with describing holistic interpretation and detailing its prevalence in existing practice across courts and across areas of law. The method’s prevalence across distinct fields of law speaks for its acceptability and feasibility. This section expands on why holistic interpretation is a method that interpreters should employ, the implications that this adoption might have for other interpretive methods, and potential complexities that might arise regarding the scope of individual rights protections.

A. Enriching Textualism

Textualism faces criticism as overly technical and hyper-fixated on dueling dictionary definitions and arcane grammatical rules. Much of this criticism is

169. John B. Harrison was a member of the 1906 Oklahoma Constitutional Convention, and served as Supreme Court Commissioner and, later, as Assistant Attorney General of Oklahoma before serving on the Oklahoma Supreme Court starting in 1918. John B. Harrison, Oklahoma Hall of Fame, Gaylord-Pickens Museum, <https://www.oklahomahof.com/hof/inductees/harrison-john-b-1939> [<https://perma.cc/44HL-ZKJA>]. While Robertson quotes from “a paper on this subject” by Harrison, he does not give a title or any other citation information, rendering the source of the quotation unclear. See *In re Application of State to Issue Bonds to Fund Indebtedness*, 136 P. 1104, 1109 (Okla. 1913) (Robertson, J., dissenting).

170. *Id.* at 1110 (Robertson, J., dissenting).

171. *Id.*

172. *Id.* at 1110–11.

likely justified. But textualists may get ahead of at least some of these attacks by employing holistic interpretation. As Akhil Amar writes in advocating his intra-textualist approach, “[i]f the Court is to place so much emphasis on text, it owes us a more sophisticated version of textualism.”¹⁷³

Holistic interpretation is one way to achieve this greater sophistication by giving additional interpretive resources to those who seek to interpret constitutions. Provisions that are ambiguous, abstract, or otherwise difficult to interpret may not be so complicated when considered in the context of the entire document. The word “bear” might mean a large, furry animal, but even a tiny bit of additional textual context—“bear arms”—reduces the universe of potential meanings for the term.¹⁷⁴

For a more complex example, consider *Scribner v. State*, in which the Oklahoma Court of Criminal Appeals addressed whether Scribner, who had been convicted of murder, was immune from prosecution because he had been subpoenaed and testified before a grand jury to facts that were ultimately used as evidence to convict him (though the thrust of his testimony accused another individual of the murder).¹⁷⁵ Scribner pointed to Article Two, Section Twenty-Seven of the Oklahoma Constitution, which provided that:

Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with an offense against the laws of the state, shall not be excused from giving testimony or producing evidence, when legally called upon so to do, on the ground that it may tend to incriminate him under the laws of the state; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence.¹⁷⁶

The state had violated this provision, Scribner argued, by using evidence from his grand jury testimony against him in his prosecution.¹⁷⁷ Reading Section Twenty-Seven in isolation, it seems like Scribner might have a case. He had indeed testified (pursuant to a subpoena), his testimony concerned the guilt of another person, and his testimony was ultimately used against Scribner as well. Yet Section Twenty-Seven might be construed to refer to an instance where one is compelled, as its first half addresses how one “shall not be excused” from testifying, and goes on to refer to one who “may so testify or produce evidence,” potentially suggesting an application only to those “who have not been excused, and have been compelled to so testify or produce evidence.”¹⁷⁸

To address the question, the court turned to holistic interpretation, reasoning that Article Two, Section Twenty-Seven needed to be “construed together” with

173. Amar, *supra* note 3, at 812.

174. *But cf.* GORDON R. DICKSON, *THE RIGHT TO ARM BEARS* (2000).

175. *See* *Scribner v. State*, 132 P. 933, 949 (Okla. Crim. App. 1913).

176. OKLA. CONST. art. II, § 27.

177. *See* *Scribner*, 132 P. at 949.

178. *Id.* at 937.

Article Two, Section Twenty-Two, which provides that “[n]o person shall be compelled to give evidence which will tend to incriminate him, except as in this Constitution specifically provided.”¹⁷⁹ Under this holistic reading, the court reasoned that anyone who seeks immunity under Section Twenty-Seven “must comply fully with the spirit of all of the provisions which the Constitution contains on this subject,” meaning that immunity could only be conferred upon those “compelled” to testify in a manner triggering Section Twenty-Two.¹⁸⁰ Because Scribner appeared before the grand jury and testified without objecting, he waived his right against self-incrimination and therefore could not claim immunity.¹⁸¹ Holistic interpretation enabled the court to decide between two alternate interpretations of the immunity granted under Section Twenty-Seven.

Relatedly, difficult questions of adjudication may become simpler with context. As a simple example, a Florida court may be faced with a state constitutional challenge to a state statute authorizing the death penalty for certain forms of homicide.¹⁸² The defendant may argue that the death penalty violates Article One, Section Seventeen of Florida’s constitution, which provides that “[e]xcessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden.”¹⁸³ This might seem like a tough question, especially since the text of this provision varies from the Eighth Amendment to the United States Constitution in its identification of prohibited forms of punishment like “indefinite imprisonment,” “forfeiture of estate,” and “unreasonable detention of witnesses.”¹⁸⁴ Yet the answer is apparent when one considers the additional context provided in the very next sentence: “The death penalty is an authorized punishment for capital crimes designated by the legislature.”¹⁸⁵ For those who think that this doesn’t count as holistic analysis because it concerns only a single provision, the same situation might arise in Oklahoma, which prohibits “cruel or unusual punishments,”¹⁸⁶ yet, in a separate section, provides that “[a]ny method of execution shall be allowed, unless prohibited by the United States Constitution,” and that the death penalty carried out under a valid method “shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments.”¹⁸⁷

Holistic interpretation is appealing because one need not stray beyond the constitution’s boundaries to apply a holistic approach. Courts engaged in both constitutional and statutory interpretation urge that the interpretive exercise remain focused on the text, emphasizing that if the text resolves the dispute, there’s no

179. *Id.* at 933, 936; OKLA. CONST. art. II, § 22.

180. *Scribner*, 132 P. at 936, 939.

181. *See id.* at 949.

182. *See* FLA. STAT. §§ 782.04(a) & 775.082 (defining the crime of murder in the first degree and providing for its punishment, which may include the death penalty).

183. FLA. CONST. art. I, § 17.

184. *See id.*; *see also* U.S. CONST. amend. VIII.

185. FLA. CONST. art. I, § 17.

186. OKLA. CONST. art. II, § 9.

187. OKLA. CONST. art. II, § 9a.

need to consider other interpretive resources.¹⁸⁸ Holistic interpretation complies with this command by drawing only on the text. Those who might otherwise resort to debates over legislative intent and original public meaning might not need to engage in such extratextualist sources when confronting disputes over interpretation, as the textual context may be enough to resolve the case.

While a diversity of interpretive tools remains ideal, even those who urge pluralist approaches emphasize the importance of text.¹⁸⁹ Holistic interpretation may prevent hasty findings of ambiguity that prompt legal actors to rush outside of their expertise to draw on preferred tidbits of history and policy that support their desired interpretation.¹⁹⁰ Sticking with the text keeps the task of interpretation within judges' and attorneys' wheelhouse, rather than inviting departures to matters of history that are better left for experts.¹⁹¹

Moreover, while holistic interpretation sticks with the text of the Constitution, it is broad enough to give interpreters more to work with than more rigid approaches to incorporating textual context. A more inclusive consideration of the document as a whole, rather than one that drills down on recurring language, might prevent interpreters from making intratextualist arguments that replicate the hyper-technical tendencies that bedevil clause-bound textualism, or smuggling in other methodology in the guise of textualist analysis.¹⁹² To be sure, a holistic approach may not always reveal the answer. The United States Constitution, in particular, may give interpreters fewer contextual clues to its

188. See, e.g., *Eidson v. South Carolina Department of Education*, 906 S.E.2d 345, 353 (S.C. 2024) ("Constitutional interpretation begins with the text itself, and when the meaning of the text is plain that is also where our inquiry ends."); *State v. Lane*, 355 P.3d 914, 924 (Or. 2015) ("As always, the weight that the courts will accord a particular bit of enactment history will depend on the circumstances—including the clarity with which the legislature's or the people's intentions have been expressed in the text of an enactment and the nature of the history itself."); see also, e.g., *Campbell v. Washington County Technical College*, 219 F.3d 3, 6 (1st Cir. 2000) ("As in other cases involving statutory interpretation, we look first to the Act's plain language. Absent ambiguity, the inquiry ends with the text of the statute.") (internal citation omitted); *ExxonMobil Pipeline Company v. Coleman*, 512 S.W.3d 895, 901 (Tex. 2017) ("We do not substitute the words of a statute in order to give effect to what we believe a statute should say; instead, absent an ambiguity, we look to the statute's plain language to give effect to the Legislature's intent as expressed through the statutory text.").

189. Richard H. Fallon, Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. 1189, 1244–46 (1987) (advocating a pluralist approach to constitutional interpretation but ranking arguments from text as the most important factor, arguing that "[w]here compelling arguments from text unambiguously require a conclusion, the text must be held dispositive.").

190. ANTONIN SCALIA & BRIAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 377 (2012) (critiquing the selective use of legislative history by comparing "its use to entering a crowded cocktail party and looking over the heads of the guests for one's friends."); see also *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 113 (2022) (applying the party crowd metaphor to the use of history generally and emphasizing the indeterminate nature of historical evidence).

191. See Michael L. Smith, *The Present Public Meaning Approach to Constitutional Interpretation*, 89 TENN. L. REV. 885, 936 (2022); see also Irving, *supra* note 20.

192. See Amar, *supra* note 3, at 815 (overextending intratextualist methodology and incorporating arguments from First Amendment doctrine when comparing the First Amendment's "freedom of speech" language with the Speech and Debate Clause).

meaning relative to longer, more detailed state constitutions.¹⁹³ Even so, holistic interpretation gives interpreters more to start with, and narrows the realm of questions that might need to be answered with extrinsic evidence.

Holistic interpretation urges greater attention to the constitution being interpreted, granting legal actors the flexibility to make informed interpretations of provisions that might otherwise be mysterious or out-of-step with the rest of the document. At the same time, it refocuses attention on the constitution's text, counseling against unnecessary frolics into history, policy, or other approaches that may strain the expertise of courts and judges. This avoidance has implications for meta-theoretical debates over interpretive methods, which I turn to now.

B. Originalism and Linguistic Drift

As a related point, originalists typically urge that the Constitution be interpreted by reference to its original public meaning. These disputes tend not to arise over straightforward provisions, such as the number of years in a presidential term or the ages required of officeholders.¹⁹⁴ Instead, original meaning is frequently at issue when the provision at issue is one that is broad, abstract, or otherwise ambiguous. When this is the case, those who may be uneasy with or skeptical of a provision's textual implications may turn to history to urge change.¹⁹⁵ A frequent justification for this move is a fear of linguistic drift—that the meaning of words changes over time, and that a nonoriginalist approach will lead to chaos and confusion as a result.¹⁹⁶ Originalism gets us around this confusion—at least, that's what its advocates claim.¹⁹⁷

Analyzing constitutional provisions through a holistic interpretation lens demonstrates how concerns over linguistic drift are overblown. Consider Article IV,

193. See TARR, *supra* note 135 (remarking on the length and detail of state constitutions).

194. Although some originalists try mightily to demonstrate otherwise. See Randy E. Barnett & Ilan Wurman, *Trump Might Have a Case on Birthright Citizenship*, N.Y. TIMES. (Feb. 15, 2025) <https://www.nytimes.com/2025/02/15/opinion/trump-birthright-citizenship.html> [https://perma.cc/7TE3-TSNV].

195. See Alfred H. Kelly, *Clio and the Court: An Illicit Love Affair*, 1965 SUP. CT. REV. 119, 126 (1965) (describing the resort to (bad) historical argumentation as a “precedent-breaking device”).

196. See Lawrence B. Solum, *The Fixation Thesis: The Role of Historical Fact in Original Meaning*, 91 NOTRE DAME L. REV. 1, 17–18 (2015) (describing linguistic drift and arguing that meaning is fixed because “the communicative content of an utterance is also a function of context, and context is time-bound as well”); Thomas R. Lee & James C. Phillips, *Data-Driven Originalism*, 167 U. PA. L. REV. 261, 265–66 (2019) (noting the change in the meaning of the phrase, “domestic violence” and arguing that because the Constitution's meaning is understood to be fixed, importing the modern meaning of the phrase is a move that “would be laughed out of court”).

197. See Lawrence B. Solum, *Original Public Meaning*, 2023 MICH. ST. L. REV. 807, 813–15 (2023) (arguing that the Seventh Amendment's use of the term “dollar” does not refer to Federal Reserve Notes and, instead, refers to a certain amount of silver that was in Spanish silver dollars at the time of the founding); but see Michael L. Smith, *Originalism and the Meaning of “Twenty Dollars”*, 56 CREIGHTON L. REV. 499 (2023) (demonstrating that tying “dollar” to Spanish silver dollars resolves nothing, as the term may still refer to the legal concept of dollar (Federal Reserve Notes), the amount of silver in those dollars (Solum's view), or the dollars themselves (Euros, if we follow the evolution of Spanish Pieces of Eight to their modern incarnation)).

Section Four of the Constitution, which states, “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”¹⁹⁸ Originalists frequently use this provision to illustrate linguistic drift.¹⁹⁹ Lawrence Solum discusses this provision in the context of a broader point about linguistic drift:

The meaning of words and phrases changes over time. Sometimes this idea is illustrated by pointing to a phrase in Article IV of the Constitution, “domestic violence,” which was used to refer to political violence within a state (riots, rebellions, insurrections) and not violence within a family (child abuse, spousal abuse, elder abuse), the contemporary meaning of the phrase. It is simply a mistake to think that Article IV empowers Congress to enact legislation governing violence within families or households, although one scholar has made that argument. Of course, a constitutional amendment granting Congress the power to regulate “domestic violence” enacted in the twenty-first century could and likely would convey the contemporary meaning of the phrase—but that fact shows that the meaning of a word or phrase that appears in a written document is a function of linguistic facts at the time the document is drafted.²⁰⁰

Originalists treat this and other examples of linguistic drift as justifications for originalist methodology. Solum asserts that “[t]he contemporary semantic meaning of the phrase ‘domestic violence’ is intimate partner abuse, battering, or wife-beating,” and that if “that meaning was unknown in the late eighteenth century, it would be a linguistic mistake to interpret the domestic violence clause” because the meaning of the provision is “fixed at the time of ‘constitutional utterance.’”²⁰¹

198. See U.S. CONST. art. IV, § 4.

199. See Lawrence B. Solum, *Originalist Methodology*, 84 U. CHI. L. REV. 269, 281 (2017); Lee & Phillips, *supra* note 196, at 265; ILAN WURMAN, A DEBT AGAINST THE LIVING: AN INTRODUCTION TO ORIGINALISM 32–33 (2017).

200. Solum, *supra* note 197, at 813.

201. Lawrence B. Solum, *District of Columbia v. Heller and Originalism*, 103 NW. U. L. REV. 923, 945–46 (2009) (internal quotation marks omitted). Solum’s treatment of linguistic drift and fixed original meaning is somewhat circular, as Solum purports to explain a “fundamental warrant” for the notion that meaning is fixed at the time of the utterance, yet asserts that interpreting a phrase based on its new, contemporary meaning is a mistake “because the semantic content is fixed at the time of ‘constitutional utterance’”—the very thing Solum had set out to prove. See *id.* As for the deeper (and, apparently, still unanswered) question of whether the fixation thesis is true or desirable, Frederick Schauer notes that the answer to the question “implicates the largest questions of just what a constitution is and just what a constitution is designed to do,” suggesting that an approach “that relies heavily on contemporary public meaning . . . recognizes the importance of constraint by enacted and authoritative language in ways that the most robust forms of living constitutionalism do not, while at the same time recognizing the potential problems of an excess constraint by the past, including the past’s problems and the past’s solutions to its (and our current) problems.” Frederick Schauer, *Constructing Interpretation*, 101 B.U.L. REV. 103, 117 n.44 (2021); see also Frederick Schauer, *Unoriginal Textualism*, 90 GEO. WASH. L. REV. 825 (2022) (expanding on an interpretive approach that looks to the contemporary meaning of the Constitution).

Originalists argue that this “Fixation Thesis” keeps interpreters from applying modern meanings and getting “laughed out of court,” because “almost everyone agrees with . . . the ‘Fixation Thesis,’” and would therefore consider applying a modern reading to be ridiculous.²⁰² Thus, originalist methodology that uncovers fixed meanings allows readers to avoid falling prey to linguistic drift.²⁰³

Holistic interpretation complicates this account. As the preceding discussion demonstrates, originalists who use “domestic violence” as an example of linguistic drift avoided through originalist methodology tend to focus on the two-word phrase. But the entirety of Article IV, Section Four contains far more than those two words. That language, again, states “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”²⁰⁴

One need not resort to founding-era dictionaries or documents to avoid falling into the linguistic drift trap of interpreting “domestic Violence” to refer to intimate partner violence.²⁰⁵ One must simply read the terms in context. The phrase, “domestic Violence,” in context, refers to domestic insurrection—it’s the “State” that’s being protected against the violence, and the term appears just alongside the related problem of “Invasion.” These context cues inform the reader that the insurrection meaning of “domestic violence” is appropriate. As Michael Dorf points out:

The new meanings of “domestic Violence” and “Republican” have supplemented, rather than supplanted, their original meanings. Any competent reader of modern English will understand from the context that the Guarantee Clause uses “domestic Violence” to mean civil conflict and “Republican Form of Government” to mean representative government. We do not need semantic originalism to constrain contemporary readers from adopting wacky interpretations of the text. Attention to context and common sense will do just fine.²⁰⁶

Once one realizes that a bit of context can resolve purported ambiguities, linguistic drift loses much of its force as a motivation to adopt originalism, as one need not delve into history to avoid interpretive confusion. Contextual consideration of the present meaning of the terms will do just fine, as considering the Constitution—or even just the provision—as a whole will guide interpreters away from alternate definitions that have arisen as a result of linguistic drift.

202. Lee & Phillips, *supra* note 196, at 266.

203. See WURMAN, *supra* note 199.

204. See U.S. CONST. art. IV, § 4.

205. But see Lee & Phillips, *supra* note 196, at 296–300 (undertaking this task through corpus linguistics analysis).

206. Michael C. Dorf, *The Undead Constitution*, 125 HARV. L. REV. 2011, 2044 (2012) (reviewing JACK M. BALKIN, *LIVING ORIGINALISM* (2011); DAVID A. STRAUSS, *THE LIVING CONSTITUTION* (2010)).

There may be other reasons to adopt originalism, but doing so because it is needed to avoid falling prey to linguistic drift is not a convincing one.²⁰⁷

C. Accounting for Constitutional Conflicts

Holistic interpretation can ensure order and predictability in constitutional law by avoiding conflicts and tensions among constitutional provisions. Recall that many state courts engage in a form of holistic interpretation that emphasizes harmony amongst constitutional provisions.²⁰⁸ These admonitions frequently urge the need to avoid conflict between constitutional provisions. Colorado's Supreme Court, for example, states that, when interpreting state constitutional amendments, "[c]ourts should consider the amendment as a whole and, when possible, adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict between such provisions."²⁰⁹

Other state courts that emphasize considering state constitutions as a whole document also go out of their way to emphasize the importance of harmonious interpretation. Arizona's Supreme Court, while in some cases urging that courts interpret the state constitution as a whole, elsewhere emphasizes the need for harmonious interpretation. In *State ex rel. Nelson v. Jordan*, for example, the court faced a pickle: the voters had approved two separate constitutional amendments—the first, Proposition 104, which abolished the office of State Auditor, and proclaimed that the remaining officers in the executive department would serve two-year terms (as provided in the original constitutional language), and the second, Proposition 108, which extended the term of office of all executive officers to four years, and included the State Auditor among those officers.²¹⁰ The court restated its duty “to harmonize both [amendments] so the constitution is a consistent workable whole,” and reasoned that they conflicted “only if the language of Proposition No. 104 is literally applied in a vacuum without searching for the end sought to be attained.”²¹¹ That end—to abolish the office of State Auditor—was consistent with Proposition 108's term extension, leading the court to combine both propositions and conclude that the Constitution's Article Five, Section One no longer included a State Auditor in the Executive Department and provided for four-year terms for those officers that remained.²¹²

207. One might contend that holistic interpretation may not be enough to address subtler instances of linguistic drift involving seemingly abstract or imprecise terms that have become increasingly vague over time. While this is a debate better hashed out elsewhere, it's worth noting that this response appears inclined to discover an original meaning where none may exist. See JACK M. BALKIN, *LIVING ORIGINALISM* 28 (2021) (“Precisely because laws passed by a supermajority must appeal to a broad range of people, framers will sometimes use abstract and general language to paper over disagreements that would emerge if more specific language were chosen.”); see also Leah Ceccarelli, *Polysemy: Multiple Meanings in Rhetorical Criticism*, 84 Q. J. SPEECH 395, 404–07 (1998) (describing the role that “strategic ambiguity” plays for those hoping to appeal to an audience made up of opposing factions).

208. See *supra*, Section III.B.

209. *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996).

210. *State ex rel. Nelson v. Jordan*, 450 P.2d 383, 385 (Ariz. 1969).

211. *Id.* at 386.

212. *Id.*

Jordan illustrates how holistic interpretation is necessary to spot and avoid potential conflicts between constitutional provisions or amendments. Giving effect to all amendments is crucial, the Arizona Supreme Court noted, because it otherwise renders “pointless” the act of submitting nullified amendments to the people.²¹³ A failure to engage in holistic interpretation may lead to confusion, should the court adopt a reading in tension or in conflict with other constitutional provisions.

Holistic interpretation plays a key role in resolving provisional tensions and contradictions which state courts are unable to resolve through appeals to harmony alone.²¹⁴ While many courts urge harmonious interpretation, and while *Jordan* illustrates the lengths to which courts may go to reconcile seemingly competing provisions, conflicts are sometimes inevitable. In these instances, holistic interpretation counsels the formulation of rules to overcome these conflicts, such as the contract-inspired interpretive maneuver of prioritizing specific provisions over more general ones.²¹⁵ In other instances, courts are attentive to the time of enactment and prioritize more recent provisions or amendments over earlier-enacted provisions.²¹⁶ Vicki Jackson’s approach to holistic interpretation, which emphasizes prioritizing later-enacted federal constitutional amendments over earlier-enacted amendments or original constitutional provisions, is a sophisticated version of this approach.²¹⁷

A holistic approach to constitutional interpretation may minimize chances of interpretations that cause problems by running afoul of other constitutional provisions. Where conflict is impossible, holistic methodology gives interpreters resources for working through contradictory provisions. While perhaps more of an in-the-weeds reason to consider holistic interpretation, conflict avoidance and management are important resources for courts confronting some of the gnarlier issues in constitutional law.

D. Individual Rights

Holistic interpretation may have mixed implications for the protection of individual rights. Some scholars who advocate a holistic approach to constitutional

213. *See id.*

214. *See, e.g.,* *Leandro v. State*, 488 S.E.2d 249, 258 (N.C. 1997) (“It is axiomatic that the terms or requirements of a constitution cannot be in violation of the same constitution—a constitution cannot violate itself.”); *Estate of Bell v. Shelby County Health Care Corp.*, 318 S.W.3d 823, 835 (Tenn. 2010) (“No constitutional provision should be construed to impair or destroy another provision.”).

215. *See State ex rel. League of Women Voters of New Mexico v. Advisory Committee to the New Mexico Compilation Commission*, 401 P.3d 734, 741 (N.M. 2017) (“We seek to construe constitutional provisions in harmony, but when provisions cannot be harmonized, the specific section governs over the general regardless of priority of enactment.”) (internal quotation marks omitted); *see also Mutual Life Ins. Co. of New York v. Hill*, 193 U.S. 551, 558 (1904) (“The ordinary rule in respect to the construction of contracts is this: that where there are two clauses in any respect conflicting, that which is specially directed to a particular matter controls in respect thereto over one which is general in its terms, although within its general terms the particular may be included.”).

216. *See, e.g., Sharpe v. State ex rel. Oklahoma Bar Ass’n*, 448 P.2d 301, 306 (Okla. Ct. Jud. App. Div. 1968) (“Later provisions of the Constitution or statutes on the same subject matter must prevail when in conflict with earlier provisions.”).

217. *See Jackson, supra* note 86, at 270–71.

interpretation suggest that it may lead to enhanced individual rights protections. Robert Williams, for example, suggests that separate state constitutional provisions may be read in conjunction to enhance certain rights protections.²¹⁸

To be sure, this vision holds some promise. State constitutional dignity provisions, for example, may strengthen other individual rights protections, such as rights to reproductive autonomy²¹⁹ and prohibitions on cruel or unusual punishment.²²⁰ State constitutional punishment provisions may find further support from other state constitutional provisions, including closely-related provisions requiring rehabilitation and restricting certain punishments for juveniles,²²¹ as well as other provisions such as provisions describing the purposes punishment is to serve,²²² prohibitions of debtors' prisons,²²³ and provisions banning unnecessary rigor of those arrested or subject to criminal punishment.²²⁴ Reading punishment provisions in context with these additional provisions may strengthen provisions that might otherwise remain overly abstract.

In addition to enhancing the scope of one right's protection by reference to other, supporting constitutional provisions, combining constitutional rights claims may lead courts to protect individual rights where they might otherwise refuse to do so. Kerry Abrams and Brandon Garrett's work details a number of examples of "intersectional rights" claims in which single constitutional rights that might not be enough to warrant overturning a government action or procedure may combine to formulate a stronger rights claim and increased scrutiny of the government's conduct.²²⁵ Similarly, Michael Coenen describes how courts can apply a mathematical model to rights, tallying up their "unconstitutionality points conferred by rights" to conclude whether a law or action scores sufficiently high to be deemed constitutional.²²⁶ Multiple rights provisions considered together

218. See Williams, *supra* note 21.

219. See Michael L. Smith, *Dignity and Abortion Rights Under State Constitutional Law*, 75 SYRACUSE L. REV. 863 (2025).

220. See *Walker v. State*, 68 P.3d 872, 883 (Mont. 2003) ("Just as we read the privacy provision of the Montana Constitution in conjunction with the provisions regarding search and seizure to provide Montanans with greater protections from government intrusion, so too do we read the dignity provision of the Montana Constitution together with Article II, Section 22 to provide Montana citizens greater protections from cruel and unusual punishment than does the federal constitution."); see also Jonathan Simon, *The Second Coming of Dignity*, in *THE NEW CRIMINAL JUSTICE THINKING* 275, 300 (Sharon Dolovich & Alexandra Natapoff eds., 2017) (arguing that modern conceptions of dignity in constitutional law jurisprudence may be employed to challenge mass incarceration practices).

221. See Robert J. Smith, Zoë Robinson, & Emily Hughes, *State Constitutionalism and the Crisis of Excessive Punishment*, 108 IOWA L. REV. 537, 588–91 (2023).

222. See ALASKA CONST. art. I, § 12; MONT. CONST. art. II, § 28(1); N.H. CONST. pt. 1, art. XVIII; N.C. CONST. art. XI, § 2; OR. CONST. art. I, § 15; WYO. CONST. art. I, § 15.

223. See Christopher D. Hampson, *The New American Debtors' Prisons*, 44 AM. J. CRIM. L. 1 (2016); see also Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2 (2018).

224. See IND. CONST. art. I, § 15; OR. CONST. art. I, § 13; TENN. CONST. art. I, § 13; WYO. CONST. art. I, § 16.

225. Abrams & Garrett, *supra* note 13, at 1330–49.

226. Coenen, *supra* note 12, at 1094.

may add up to a conclusion that the government's action is unconstitutional—even if a single rights claim might not be enough to get to that result.²²⁷

But while provisions might add up to increased individual rights protections, other provisions may reduce the protective force of constitutional rights. State constitutions contain provisions that are likely to restrict other individual rights challenges. One example, already mentioned, are the numerous state constitutional provisions restricting the definition of marriage to one man and one woman.²²⁸ These provisions may, through a holistic approach, curtail the scope of protections for LGBTQ individuals provided by broader equal protection and individual rights provisions.²²⁹

Moreover, punishment provisions may be broadened through holistic reading—but they may also be narrowed. Oklahoma's constitution prohibits "cruel or unusual punishment,"²³⁰ using a disjunctive phrase that is broader than the Eighth Amendment's conjunctive reference to cruel "and" unusual punishment.²³¹ Broad readings of Oklahoma's punishment provision are likely to falter under a holistic approach, however, as Oklahoma's constitution goes on to affirm the constitutionality of the death penalty, proclaim that "[a]ny method of execution shall be allowed, unless prohibited by the United States Constitution," and that the death penalty cannot be deemed to violate Oklahoma's prohibition of cruel or unusual punishment or "any other provision of this Constitution."²³² Despite the broader text of Oklahoma's punishment provision, Oklahoma's courts apply Eighth Amendment doctrine regarding punishment proportionality, "meaning that defendants almost never prevail under the cruel or unusual punishments provision of the state constitution."²³³ Other state constitutions have notably harsh provisions as well, such as Vermont's which states that "means ought to be provided for punishing by hard labor, those who shall be convicted of crimes not capital, whereby the criminal shall be employed for the benefit of the public, or for the reparation of injuries done to private persons; and all persons at proper times ought to be permitted to see them at their labor."²³⁴ It may be difficult to argue that a punishment provision in Vermont's constitution should be read to provide expansive protections to those convicted of crimes if a nearby provision in that same constitution mandates chain gangs.

Holistic interpretation may have mixed implications for individual rights. Those advancing rights claims would do well to engage in holistic interpretation

227. *Id.* at 1078–82.

228. *See* Smith, *supra* note 22, at 655.

229. *See id.*

230. OKLA. CONST. art. II, § 9.

231. U.S. CONST. amend. VIII; *see also* William W. Berry III, *Cruel State Punishments*, 98 N.C. L. REV. 1201, 1244–45 (2019) (arguing for "broader analysis" of constitutions using "disjunctive language," and suggesting that this approach discourages jurisdiction counting and consideration of a punishment's unusual nature).

232. OKLA. CONST. art. II, § 9A.

233. Berry, *supra* note 231, at 1231.

234. VT. CONST. ch. II, § 64.

when it helps—particularly at the state level where rights exist in greater diversity than at the federal level.²³⁵ But claims that holistic interpretation is worth pursuing because it will enhance individual rights protection may not account for the pernicious outcomes holistic interpretation might necessarily support.

Holistic interpretation may give indirect force to state constitutional provisions that are no longer good law due to their preemption by federal statute or the United States Constitution.²³⁶ While holistic interpretation contributes to this risk, it may also contribute to the solution. A holistic perspective on constitutions may strengthen calls for change to state constitutions to eliminate these zombie provisions.²³⁷ Interest and advocacy groups seeking to advance substantive reforms may rightly ask why eliminating outdated or preempted constitutional provisions is worth the time and effort.²³⁸ Recognizing the potential, negative influence these provisions may have in other areas of constitutional interpretation may be the additional justification for such efforts. Alternatively, holistic interpretation may prompt interpreters to develop sub-rules for interpretation in cases that might implicate zombie provisions. Just as holistic methodology might overcome potential conflicts by prioritizing more recent or more specific provisions, a robust holistic approach may counsel interpreters to recognize zombie provisions for what they are and to avoid applying them when evaluating the context of the provision at issue.²³⁹

V. POTENTIAL OBJECTIONS

Holistic interpretation leads to a stronger form of textualism—which might otherwise be rightly criticized as distracted with minutiae and arcane definitional games. But it isn’t without its potential critics. One might take issue with holistic interpretation by arguing that it is complicated and manipulable, opening the door to a near-endless range of cross-document comparisons and giving interpreters the ability to choose outcomes simply through a choice of what parts of the Constitution they include in their analysis. These goal-oriented, malleable treatments of the Constitution’s whole may be likely to escape careful scrutiny or criticism because they proceed under the buttoned-down banner of “textualism.”

To start, there is reason to doubt that a broader consideration of the Constitution’s text will lead to increased manipulation. Drawing on multiple studies—both his own and those performed by others—Adam Samaha urges that scholars “resist any conventional wisdom that increasing the number of

235. See generally EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA’S POSITIVE RIGHTS* (2013) (describing how state constitutions contain positive rights distinct from the U.S. Constitution’s negative rights).

236. See Smith, *supra* note 22, at 652–60.

237. An endeavor which may not be hopeless, given the frequency with which state constitutions are amended. See WILLIAMS, *supra* note 26 (“The states’ constitutions have been amended an average of about 1.25 times per year.”).

238. See Maureen E. Brady, *Zombie State Constitutional Provisions*, 2021 WIS. L. REV. 1063, 1089–90 (2021).

239. Thanks to Howard Wasserman for suggesting this alternate approach that interpreters might take.

interpretive sources will increase interpreter discretion,” arguing that when “rules against spinning and cherry picking sources” are tough and followed, “discretion will tend to fall as sources increase.”²⁴⁰ While this still requires standards governing the selection and usage of potential sources of meaning, the limited universe of a constitution’s content (particularly the relatively brief United States Constitution) is a good foundation for developing such standards.

There is little reason to believe that interpreters will be unable to resolve questions of relevant context—so long as they’re confronted in the first place. Lawrence Solum describes “organic unity holism,” a variation of holistic interpretation, under which “[m]eaning only attaches to the whole Constitution as an organic unity; as a consequence individual clauses are not meaningful units of constitutional communication.”²⁴¹ Solum properly rejects this variation as “create [ing] a false dilemma,” noting that particular provisions may remain the focal point of interpretive questions or disputes (removing the need to debate the meaning of the whole document in every case) while acknowledging that the whole of the Constitution remains relevant to resolving these questions.²⁴²

Additionally, the degree of holistic analysis required in each case may vary. Sometimes, the provision itself may be sufficient. To illustrate: the Constitution’s reference to “domestic Violence,” does not appear to refer to intra-familial or intimate partner abuse so long as a reader considers the entire sentence being interpreted: “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”²⁴³ Even a modest version of holistic interpretation in which readers consider the entire sentence rather than two words serves to dispel much of the potential confusion linguistic drift might otherwise create.

More broadly, concerns that a method is overly complicated and not simple or straightforward tend to overlook the complicated world in which these methods must operate.²⁴⁴ Considering a constitution as a whole may be a lot of work—especially if the constitution at issue is lengthy, complex, and has numerous provisions that might bear on the dispute at issue.²⁴⁵ But things might be harder if one employs a concise method like, hypothetically, “the plain meaning of the provision at issue alone governs.” That plain meaning may be difficult to derive absent helpful context from elsewhere in the constitution. Or the meaning might

240. Adam M. Samaha, *Looking Over a Crowd—Do More Interpretive Sources Mean More Discretion?*, 92 N.Y.U. L. REV. 554, 615 (2017).

241. Lawrence B. Solum, *Originalism and the Unwritten Constitution*, 2013 U. ILL. L. REV. 1936, 1963 (2013).

242. *Id.* at 1963–65.

243. U.S. CONST. art. IV, § 4.

244. See Glen Staszewski, *The Dumbing Down of Statutory Interpretation*, 95 B.U. L. REV. 209, 248 (2015) (identifying instances where particular theories like textualism, intentionalism, and purposivism will fail to resolve interpretive disputes).

245. See Bruhl, *supra* note 16 (arguing against wide-context approaches to interpretation in time-pressured and resource-strained lower courts).

seem apparent, but end up creating internal contradictions or tensions with other provisions the interpreter fails to consider. Holistic interpretation may be a bit more complex of a theory to state and understand, but once interpreters get their heads around it, they're better able to reach conclusions in these scenarios.²⁴⁶

Additionally, theories of interpretation that sound simple may not be as simple in practice. Originalist theories that require interpreters to determine the original public meaning of a constitutional provision might sound straightforward at first.²⁴⁷ But answering them requires complex historical analysis that inexpert judges and attorneys are inclined to get wrong.²⁴⁸ What's more, the simple-sounding theory papers over key questions the interpreter must answer, including questions of evidentiary sufficiency in determining public meaning, who the relevant public is, and how to weigh seemingly contradictory pieces of evidence.²⁴⁹ Similar issues arise with textualism—as a seemingly simple rule of looking to the plain meaning of the text becomes complicated when applied to the messiness and unpredictability of real world circumstances.²⁵⁰

Moreover, concerns over interpretive complexity lose their force when one considers the prevalence of holistic interpretive methodology in other areas of law. Courts interpreting contracts, wills, deeds, and judgments often interpret these documents as a whole to resolve interpretive questions.²⁵¹ Doing so is arguably more difficult than constitutional interpretation, as each case presents its own document that must be reviewed anew. And yet, the sky doesn't fall.

Disputes will still exist if legal actors adopt and apply holistic interpretation. Courts may struggle to determine which provisions are relevant to interpreting the provision at issue, how many additional provisions ought to be considered, and how much strength to give these other provisions. But all of these fights at least take place within the boundaries of the constitution. The parties aren't

246. See Staszewski, *supra* note 244, at 247 (arguing for courts to apply a more diverse array of interpretive tools and to avoid oversimplified methods out of concern that a failure to do so will render courts unresponsive to parties' arguments and "defeat the purpose of the enterprise and deprive judicial lawmaking or policymaking of its democratic legitimacy in this context").

247. See Solum, *supra* note 197, at 809 (describing "Public Meaning Originalism," which "holds that the fixed original meaning of the constitutional text ought to bind constitutional actors, including judges, justices, and other public officials").

248. See Michael L. Smith & Alexander S. Hiland, *Originalism's Implementation Problem*, 30 WM. & MARY BILL RTS. J. 1063 (2022) (identifying inevitable difficulties that originalist interpreters face).

249. See Solum, *supra* note 197, at 809 (acknowledging the questions that interpreters must answer when applying originalist methodology); Michael L. Smith, *History as Precedent: Common Law Reasoning in Historical Investigation*, 27 U. PA. J. CONST. L. 587, 625-32 (2025) (comparing historical interpretive methodology with common law reasoning and highlighting the standards and norms that order the usage of the latter method that are absent from the former method).

250. See William N. Eskridge, Jr., Brian G. Slocum, & Kevin Tobia, *Textualism's Defining Moment*, 123 COLUM. L. REV. 1611, 1623 (2023) (flagging the "illusory expectation of text-centric simplicity" and arguing that "the new textualism is much more complicated than Scalia and his followers have advertised," often "requir[ing] as many as twelve important choices, many of which have subchoices—and even sub-subchoices").

251. See *supra* Section III.A.

venturing beyond the text to dig into potentially boundless debates over practical consequences or historical meaning.²⁵²

One must also be alert to critiques that target poor or opportunistic holistic interpretation, rather than holistic interpretation itself.²⁵³ Steven Calabresi and Justin Braga, for example, critique Justice Douglas' opinion in *Griswold v. Connecticut*, describing it as "the subject of derisive laughter among those who read it," and arguing that most of the rights cited in his tour of the Bill of Rights are "plainly motivated by values other than privacy."²⁵⁴ While Calabresi and Braga critique Douglas's reasoning, they hurry to add that they "are all in favor of holistic interpretations of constitutional texts where holism makes sense as Judge Bork realized that it did in separation of powers or federalism cases."²⁵⁵ Similarly, on the structural interpretation front, Laurence Tribe critiques Bruce Ackerman's approach to constitutional amendment as threatening "the whole enterprise of constitutional dialogue and decisionmaking" through "a facile treatment of constitutional text and structure and a free-form approach to saying what they mean."²⁵⁶ Even so, Tribe still favors "reasoned and rigorous textual and structural analysis that is elemental to constitutional interpretation."²⁵⁷

Selective usage of holistic interpretation may also be worth calling out. While Calabresi and Braga make room for what they view as better instances of holistic interpretation, it remains unclear what criteria ought to be considered when determining whether an instance of holistic interpretation "makes sense."²⁵⁸ Employing holistic interpretation on occasion without explanation or justification may be a problem—but it is one to be addressed and solved at a higher level of debate.²⁵⁹ Still, those employing the method must be vigilant against overstating the certainty

252. See Smith, *supra* note 249 (comparing arguments from history with arguments from precedent, and critiquing the former as ungoverned by rules and norms that constrain arguments from legal authority).

253. To be sure, theories of interpretation may lend themselves to abuse or misuse, which is a relevant consideration when choosing between interpretive approaches and which is why I address concerns over a lack of standards and the potential complexity of the method. See Michael L. Smith, *Disingenuous Interpretation*, 93 MISS. L.J. 349 (2023) (arguing that certain theories of interpretation may lend themselves more than others to abuse or mistake, and comparing various theories of interpretation to evaluate their comparative tendencies toward such misuse).

254. Calabresi & Braga, *supra* note 143. Why the "motivations" or designs behind particular provisions governs their relevance to a holistic interpretive comparison goes unexplained. This gap in reasoning is glaring, as even though the motivations behind certain constitutional rights might not have individual privacy in mind, those rights may still have significant implications for individual privacy, or require some level of individual privacy as a prerequisite or as an ancillary protection. See Jacob D. Charles, *Ancillary Rights*, 173 U. PA. L. REV. 1269 (2025) (discussing the need for protection of conduct ancillary to certain rights protections if those rights are to provide meaningful protection).

255. Calabresi & Braga, *supra* note 143, at 55.

256. Laurence H. Tribe, *Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation*, 108 HARV. L. REV. 1221, 1233 (1995).

257. *Id.*

258. Other than, it seems, that Judge Bork was the one doing the interpreting. See *id.*

259. See David Simson, *Methodological Gerrymandering*, 72 CLEV. ST. L. REV. 145 (2023) (discussing and critiquing the Court's tendency to selectively apply interpretive methodologies without justification and in a manner that is frequently outcome-determinative).

or formulaic nature of holistic interpretation—a tendency that interpreters may import from similar claims about textualism more broadly.²⁶⁰

Moreover, where the provision to be interpreted is abstract or ambiguous, holistic interpretation may foreclose malleability and manipulation that might result from a seemingly more straightforward theory. Justice Ketanji Brown Jackson, dissenting in *Stanley v. City of Sanford, Florida*, makes this point in response to the majority’s critique of her rejection of “pure textualism,” as “insufficiently pliable to secure the result,” arguing that additional context—there, evidence of Congressional intent—may foreclose manipulation:

A methodology that includes consideration of Congress’s aims does exactly that—and no more. By contrast, pure textualism’s refusal to try to understand the text of a statute in the larger context of what Congress sought to achieve turns the interpretive task into a potent weapon for advancing judicial policy preferences. By “finding” answers in ambiguous text, and not bothering to consider whether those answers align with other sources of statutory meaning, pure textualists can easily disguise their own preferences as “textual” inevitabilities. So, really, far from being “insufficiently pliable,” I think pure textualism is incessantly malleable—that’s its primary problem—and, indeed, it is certainly somehow always flexible enough to secure the majority’s desired outcome.²⁶¹

Critics may take a contrary view, arguing that holistic interpretation, as a species of textualism, is vulnerable to the same criticisms typically leveraged against textualism at a more general level. Beyond the just-discussed example of misleading claims of simplicity and certainty, holistic interpretation might tend to adopt textualism’s overly technical and sometimes single-minded focus on text, in which interpreters “dwell so closely on the text that language, grammar, and syntax will tend to override the more fruitful and appropriate focus on constitutional policy and theory.”²⁶²

An initial problem with these critiques is that they assume that the holistic interpreter is only employing holistic textualism when confronting constitutional problems. Applying a single method of interpretation in the hope that a “grand” or “cosmic” theory will answer all of the tough questions is a misguided endeavor.

260. See Daniel A. Farber, *The Rule of Law and the Law of Precedents*, 90 MINN. L. REV. 1173, 1191 (2006) (“What textualism promises is not consensus but a cacophony of confident proclamations about the plain meaning of the document.”); Neil H. Buchanan & Michael C. Dorf, *A Tale of Two Formalisms: How Law and Economics Mirrors Originalism and Textualism*, 106 CORNELL L. REV. 591, 650 (2021) (“Justice Scalia’s dissent in *Sweet Home* shows that a professed commitment to textualism produces unwarranted confidence in the determinacy and meaning of language.”); but see Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 COLUM. L. REV. 1, 39–40 (2006) (arguing that “[d]isagreements over the relative clarity or ambiguity of law tend to cut across” both textualism and purposivism).

261. *Stanley v. City of Sanford, Florida*, 606 U.S. ___, 145 S.Ct. 2058, 2089 n.12 (2025).

262. Steven G. Gey, *The Procedural Annihilation of Structural Rights*, 61 HASTINGS L.J. 1, 20 (2009).

Those who choose textualism as their be-all, end-all approach to interpretation are legitimate targets of this critique.²⁶³ But that's not what I'm advocating here. As I emphasized at the outset of the piece, textualism, including holistic textualism, is one tool of many that legal actors should employ when interpreting constitutions.²⁶⁴ Those who employ holistic interpretation as one of multiple methods may also employ structural reasoning (and other methods).²⁶⁵

Even for those who insist on the sole application or prioritization of textualism, a holistic approach to a constitution's text may prompt interpreters to act with more attention to the document's structure. Akhil Amar describes how the Constitution's text, considered as a whole, gives rise to a general principle of separation of powers—noting the separation of different departments of government into separate articles, and pointing out that “each article opens with a rather similar vesting clause.”²⁶⁶ Thinking about constitutions holistically necessarily gives the interpreter more to consider, as it refers the reader to more subject matter than the clause under investigation. This additional subject matter is likely to include structural and policy considerations that critics of textualism worry might fall by the wayside. As foundational documents, constitutions' texts often refer the reader to considerations of policy and theory—think the grand language of the United States Constitution's preamble,²⁶⁷ many states' high-level guarantees of individual rights²⁶⁸ and separation of powers provisions,²⁶⁹ and, at a more

263. For extended treatments of this idea, including critiques of individual contenders for the ideal grand theory, see generally DANIEL A. FARBER & SUZANNA SHERRY, *DESPERATELY SEEKING CERTAINTY: THE MISGUIDED QUEST FOR CONSTITUTIONAL FOUNDATIONS* (2002); J. HARVIE WILKINSON III, *COSMIC CONSTITUTIONAL THEORY: WHY AMERICANS ARE LOSING THEIR INALIENABLE RIGHT TO SELF-GOVERNANCE* (2012).

264. See *supra* notes 27–28 and accompanying text.

265. See James E. Fleming, *Securing Deliberative Autonomy*, 48 STAN. L. REV. 1, 68 (1995) (“Constitutional interpretation in both [First Amendment and substantive due process] areas involves structural reasoning, not just textual exegesis or historical research concerning isolated clauses.”).

266. Akhil Reed Amar, *Architexture*, 77 IND. L.J. 671, 691–92 (2002).

267. U.S. CONST. pmbl. (“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”).

268. See, e.g., ALA. CONST. art. I, § 1 (“That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.”); COLO. CONST. art. 2, § 3 (“All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.”); MO. CONST. art. 1, § 2 (“That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry”).

269. See, e.g., COLO. CONST. art. 3 (“The powers of the government of this state are divided into three distinct departments,—the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.”); MINN. CONST. art. 3, § 1 (“The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in

granular level, other state constitutions' declarations of the fundamental goals of criminal law and punishment.²⁷⁰ Thinking holistically about these documents refers the interpreter to these principles and informs the interpretation of the provision at issue.

VI. CONCLUSION AND NEXT STEPS

Holistic interpretation resembles structural interpretation and intratextualism, and it draws on similar justifications for both methods. Yet it remains a distinct approach to constitutional interpretation and, as discussed above, brings certain advantages to interpreters that may otherwise be unavailable. Those who critique holistic interpretation as hopelessly complex, and even those who defend the theory, tend to underemphasize the prevalence of holistic interpretive methodology across a wide range of legal doctrines. This common practice—perhaps even more than the normative justifications set forth here and in the works of other advocates of holistic methodology—speaks to the method's utility.

Rather than spend the remainder of this conclusion summing up what's already been said in the abstract, introduction, and body of the piece, these final words are best spent identifying further work that may enhance understandings and applications of holistic methodology. One particularly fruitful area that remains is a deeper dive into states' applications of holistic interpretation. As discussed above, and elsewhere in the literature, state courts frequently urge holistic approaches to the interpretation of state constitutions.²⁷¹ Yet courts often state that they are applying a distinct rule or method of interpretation, but go on to apply additional or alternative methods in the analysis itself.²⁷² The examples permeating this Article demonstrate that there are certainly instances where holistic interpretation contributes to the outcome of a case. But a deeper investigation is needed into the mechanics of the cases that I and others cite in which courts purport to espouse a holistic methodology. Additionally, these cases undoubtedly sit alongside other constitutional cases in which the courts apply a clause-bound approach to the question at hand. Work to

the instances expressly provided in this constitution.”); MO. CONST. art. 2, § 1 (“The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.”).

270. See ALASKA CONST. art. 1, § 12 (“Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.”); MONT. CONST. art. 2, § 28(1) (“Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.”); OR. CONST. art. I, § 15 (“Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation.”).

271. See *supra* Section III.A.

272. See Michael L. Smith, *Missouri's Law of Constitutional Interpretation*, 93 UMKC L. REV. 703, 742–43 (2025) (identifying the Missouri Supreme Court's tendency to engage in this practice and urging that a complete accounting of a case's interpretive method draw from the actual analysis the court performs).

uncover not only the genuineness, but frequency of holistic interpretation in the states would paint a clearer picture of the method's prevalence.

And then there are the applications. Scholars who've recognized holistic interpretation and its potential have written a fair amount on how holistic application might be applied at the federal level. But more work remains to be done—both at the federal level and certainly at the state level. Variation among state constitutions, coupled with the length and complexity of the documents gives holistic interpreters more to work with. While some initial exploration illuminates state constitutional possibilities, more undoubtedly remains to be discovered.