STATUTORY INTERPRETATION AND LITERARY THEORY: SOME COMMON CONCERNS OF AN UNLIKELY PAIR*

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I. INTRODUCTION

One of the most famous questions in all of English poetry still has no authoritative answer:

Tyger Tyger, burning bright,
In the forests of the night;
What immortal hand or eye,
Could frame thy fearful symmetry?¹

Interpreters of William Blake's poem have suggested a number of answers to its central question, "Who made the tyger?" Some have characterized the tiger and his creator as evil,² a contrast to Blake's later reference in the same poem, "Did he who made the Lamb make thee?"³ Others have thought the tiger to be good, the celebration of a divinity capable of such "fearful symmetry."⁴ Concluding that the poetic question is rhetorical and therefore unanswerable, critics of both of these views have argued that it is wrong to suggest an answer at all, because Blake himself had none.⁵

The interpreters of "The Tyger" have differed not only in their answers to the question it poses, but also in the approaches they have chosen to reach an answer. One critic found the key in the poet's life and cited Blake's interest in Gnosticism as a way of resolving the question.⁶ A second saw the parallels between "The Tyger" and traditional biblical and Miltonic imagery as the most enlightening.⁷ Others looked to the countenance of Blake's own engraving of the

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3. See W. Blake, The Tyger, supra note 1, at 24.
4. When the stars threw down their spears
And water'd heaven with their tears:
Did he smile his work to see?
Did he who made the Lamb make thee?
Id. at 25.
5. See, e.g., E.D. HIRSCH, INNOCENCE AND EXPERIENCE: AN INTRODUCTION TO BLAKE 244-52 (1964).
8. E.D. HIRSCH, supra note 4, at 250.
tiger for guidance, although, not surprisingly, the tiger each critic saw there hardly seems to be the same animal. Proponents of still another point of view considered these interpretations to be attempts to understand Blake, not "The Tyger," and advised studying the poem instead of its author.

Interpretation of a literary work such as "The Tyger" may appear to raise issues very different from those presented by statutory interpretation. The issues that trouble literary theory, however, are strikingly similar to those that have troubled thinking about statutory interpretation. Practitioners of both disciplines have debated at length about the nature of the texts with which they are concerned, the relation of the author's intention to the meaning of a text, and the character of the reader's knowledge of a text's meaning. In this article I will explore some of the ways in which the debates in both disciplines have been about similar issues, and discuss how a common concern, the nature of texts and their interpretation, is a pivotal philosophical issue for both.

II. INTERPRETATION: OBJECTIVE OR SUBJECTIVE?

Every first-year law student is familiar with the central problem of statutory interpretation. Under the doctrine of the separation of powers the legislature has the sole power to enact law. The judiciary's role in interpreting the legislature's enactments is, therefore, a subordinate one. Conflicts between the legislative will and the judicial will must be resolved in favor of the legislature. Subordination to the legislative will, however, requires that it be ascertained. Approaches to the problem of ascertaining the legislative will have var-

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9. See, e.g., Swingle, supra note 5, at 61.


11. F.R. DICKERSON, supra note 10, at 8.
ied. Those adopting a formal, mechanical view believe that some statutes need not be interpreted because their meaning is clear.\(^\text{12}\) In contrast, the radical realist view is that subordination is a myth: "Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the Law-giver . . . and not the person who first wrote or spoke them."\(^\text{13}\) In between are approaches that ground the judiciary's role in an interpretive method, by requiring a search for legislative intention\(^\text{14}\) or statutory "purpose,"\(^\text{15}\) or in a measured combination of the formalist and realist extremes.\(^\text{16}\)

Analogous positions have emerged in literary theory. Reacting to what it saw as an overemphasis on the author's life history as an aid to literary interpretation, the "new critical" school judges the author's intention neither "accessible nor desirable" as a consideration in interpreting a literary work.\(^\text{17}\) Its adherents believe that the internal qualities of the work are the only proper subject of literary study, and that reliance on anything external to the text is not the study of literature, but of something else.

Recent writers, emphasizing the radically subjective potential of the interpreter\(^\text{18}\) and the self-referential, indeterminate character of language itself,\(^\text{19}\) have called into question the validity of the new critical school's approach. Thus, as in law, there are two theoretical extremes. On one side is the belief in the determinacy of meaning in the literary text and in the validity of interpreting the text's linguistic elements; on the other is the contention that each reader determines his own meaning without objective linguistic or contextual limitations.

In literary theory as in legal theory, compromises lie between the extremes. One leading theorist in the intentional school would reinstate authorial intention as a principal criterion of meaning.\(^\text{20}\) Still another theorist acknowledges the weaknesses of the new critical school's formalism but nevertheless would limit interpretive "pluralism," the view that a text can have more than one meaning, to the area surrounding an indisputable core of linguistic meaning.\(^\text{21}\)


\(^{13}\) Quoted in J. Gray, THE NATURE AND SOURCES OF THE LAW 172 (2d ed. 1921).

\(^{14}\) See Landis, supra note 10, at 886.


\(^{16}\) "Then, after measuring the legislative contribution, the court, where necessary, may add its own contribution." See F.R. Dickerson, supra note 10, at 15.

\(^{17}\) See Wimsatt & Beardsley, supra note 10, at 3.

\(^{18}\) See, e.g., D. Bleich, Subjective Interpretation (1978).

\(^{19}\) See, e.g., J. Derrida, Of Grammatology (1976).

\(^{20}\) See, e.g., E.D. Hirsch, supra note 4, at 209. For a contrast of the text-focused terminology of the new critical school—integrity, unity, subtlety, with the concerns of the "intentional school," whose passwords are author-focused—sincerity, fidelity, authenticity, see Wimsatt & Beardsley, supra note 10, at 9.

\(^{21}\) See Abrams, Rationality and Imagination in Cultural History: A Reply to Wayne Booth, 2 CRITICAL INQUIRY 447 (Spring 1976); Abrams, The Deconstructive Angel, 3 CRITICAL IN-
third believes that the limits of “pluralism” will arise because of the practical need for some determinacy of meaning if the discipline of literary study is to survive.\footnote{22}

Those familiar with only literature or law may be struck by the similarity of the concerns of the disciplines. Both are concerned with the extent to which a text is “self-interpreting,” with a meaning in the language of the text itself. Both are also troubled by claims that interpretation is a subjective and even arbitrary process by which individuals impose their prejudices onto texts in the guise of “interpreting” them. Moreover, even proponents of the polar positions are notably in agreement on a crucial point. At both extremes interpretation is seen as the operation of an independent, autonomous force that determines meaning. For the legal formalist and the new critic, the text is a separate object with a meaning that inheres in its language. That meaning is simply discovered by the reader, whose views remain subordinate to the “plain meaning” of the text. In contrast, for the legal realist and the subjective or “deconstructive”\footnote{23} literary critic, the autonomous individual reader creates the text. For theoretical moderates, interpretation is, in the end, some combination of the two extremes; the text is determinate to a point, prescribing its own meaning, but is otherwise dependent on the creative powers of the interpreter.

Both H.L.A. Hart and Reed Dickerson have developed “moderate” theories of this sort. Professor Hart argues that although there are many “plain” cases where the meaning of the text is clear, there are others that have “open texture” and leave the reader “discretion” to interpret.\footnote{24} Professor Dickerson’s theory of statutory interpretation turns on his distinction between the “cognitive” and the “creative” functions of the judge. The cognitive function involves the ascertainment of meaning; the creative function entails judicial lawmaking. Much of his book is devoted to elucidating and locating the proper scope of each function.\footnote{25}

\footnote{22} See Booth, “Preserving the Exemplar:” or, How Not to Dig Our Own Graves, 3 Critical Inquiry 407 (Spring 1977).

\footnote{23} Deconstruction is an interpretive technique that follows from the view that language itself contains infinite possibilities of meaning. The deconstructive critic unravels the text in order to demonstrate that it has no correct interpretation. See, e.g., Miller, The Critic as Host, 3 Critical Inquiry 439 (Spring 1977).


\footnote{25} See F.R. Dickerson, supra note 10, at 13-33.
The defining issue, then, is the same for both disciplines: to what extent does the text have a determinate meaning, and to what extent is the reader free to interpret it as he chooses? This tendency to account for meaning in the terminology of subject and object is part of a philosophical tradition that has existed for hundreds of years. The pitfalls of accepting the distinction long have been recognized, yet the distinction has affected our understanding of the character of knowledge in a number of disciplines.

In the following section I examine the way in which this distinction has affected thinking about a case that is an old favorite of the legal profession. I then attempt to show that a different conception of the interpretive process might better our understanding of both statutory interpretation and literary criticism.

III. THE SIGNIFICANCE OF "COMMUNITIES OF INTERPRETATION": 
Riggs v. Palmer and "The Tyger"

Legal theorists traditionally have paid less attention to statutory interpretation than to constitutional and common law adjudication. Perhaps this can be explained by the symbolic and political importance of decision-making in the Supreme Court and by the scholarly appeal of issues related to stare decisis that are posed in many common law disputes. Because ours may be an "Age of Statutes," more


attention to the problem of statutory interpretation may be warranted. In fact, many of the issues that trouble constitutional and common law adjudication have counterparts in statutory interpretation. These issues emerged quite dramatically in the celebrated case of Riggs v. Palmer. Several years before his death, Francis B. Palmer had executed a last will and testament in which he left most of his property to his grandson Elmer. Palmer later suggested that he might change the provisions of his will. To prevent Palmer from revoking the will and, as the court said, "to obtain the speedy enjoyment and immediate possession of his property," sixteen-year-old Elmer poisoned him. Palmer's daughters brought suit to prevent Elmer from taking Palmer's property under the will.

Elmer lost the case. For our purposes, the court's method of reaching its decision and the characterization of that method are more important than the result. The devolution of Mr. Palmer's property at death was governed by several statutes. One set of statutes authorized and regulated the execution and effectuation of wills, another governed intestate succession. The court's decision had to be, and in fact was, an exercise in statutory interpretation. Yet not once did the court quote or paraphrase any of the applicable statutes. The court began by acknowledging an argument advanced by Elmer's counsel that "statutes regulating the making, proof and effect of wills and the devolution of property, if literally construed, and if their force and effect can in no way and under no circumstances be controlled or modified, give this property to the murderer." But

30. 115 N.Y. 506, 22 N.E. 188 (1889).
31. Id. at 509, 22 N.E. at 189.
32. Separate provisions governed real and personal property. See N.Y. DEC. EST. LAW art. 2, § 10 (McKinney 1949) (derived from REV. STATS., pt. 2, ch. 6, tit. 1, art. 1, § 1, as amended by L. 1867, ch. 782, § 3) (superseded by N.Y. EST., POWERS & TRUSTS LAW § 3-1.1 (McKinney 1967)) which provided: "All persons, except idiots, persons of unsound mind and infants, may devise their real estate, by a last will and testament, duly executed, according to the provisions of this article."; N.Y. DEC. EST. LAW art. 2, § 15 (McKinney 1949) (derived from REV. STATS., pt. 2, ch. 6, tit. 1, art. 2, § 21, as amended by L. 1867, ch. 782, § 4) (superseded by N.Y. EST., POWERS & TRUSTS LAW § 3-1.1 (McKinney 1967)) which provided: "Every person of the age of eighteen years or upwards, of sound mind and memory, and no others, may give and bequeath his or her personal estate, by will in writing Ih.
33. See N.Y. DEC. EST. LAW art. 3, § 83 (McKinney 1949) (derived from N.Y. Real Prop. Law, ch. 547, § 281 (1896)) (current version at N.Y. EST., POWERS & TRUSTS LAW § 4-1.1 (McKinney 1967).
34. It has been argued that the court might also have interpreted Palmer's will so as to defeat Elmer's claim. See F.R. DICKERSON, supra note 10, at 200. This approach would have raised somewhat similar interpretive issues. The problem also arises when the beneficiary of a life insurance policy slays the insured and the insurer attempts to interpret the policy so as to defeat payment. See, e.g., Filmore v. Metropolitan Life Insur. Co., 82 Ohio St. 208, 92 N.E. 26 (1910).
35. 115 N.Y. at 509, 22 N.E. at 189.
this acknowledgment was not a concession that Elmer was entitled to the property. The court determined that the "literal" reading was incorrect, stating:

The purpose of those statutes was to enable testators to dispose of their estates to the objects of their bounty at death . . . . It was the intention of the law-makers that the donees in a will should have the property given to them. But it could never have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it . . . . It is a familiar canon of construction that a thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter; and a thing within the letter of the statute is not within the statute unless it be within the intention of the makers. 36

The court did not consider itself restrained by the general language of the statute. Rather, it noted that the language could be narrowed, or broadened, by reference to the "intention" of the legislature. The court, however, did not discover the legislative intent directly. That intent was inferred by looking to the purpose of the statute.

The court continued by explaining its decision in a second way:

Besides, all laws, as well as all contracts, may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own wrong, or to found any claim upon his own iniquity or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes. 37

Legal scholars in generations succeeding Riggs v. Palmer have had their say about the decision, each characterizing it within a theory of statutory interpretation. Dean Pound criticized Riggs as an example of spurious interpretation, a legislative, not a judicial, process designed "to meet deficiencies or excesses in rules imperfectly conceived or enacted." 38 This process, Pound stated, resulted in an attempt "to read into the statutes governing descent an exception." 39

In accord with Pound, Dean Wade wrote that Riggs and other similar cases "engrafted an exception on the statutes." 40 The courts that have refused to follow Riggs, he indicated, did so "upon the expressed reason that they did not have power to change a statute." 41 Thus, both Pound and Wade believed that the statutory text was perverted by the court in Riggs. For them, the statute meant one thing until the court made it mean something else.

36. Id.
37. Id. at 511, 22 N.E. at 190.
38. Pound, Spurious Interpretation, 7 Colum. L. Rev. 379, 381 (1907).
39. Id. at 382.
41. Id.
Those who approved of the *Riggs* court’s decision characterized it differently. Cardozo noted that “in the end, the principle that was thought to be most fundamental, to represent the larger and deeper social interests, put its competitors to flight.”  

42. Professors Hart and Sacks suggested that “every statute is to be read as subject to established principles and policies of the general law save only as a decision to modify or depart from them is made unmistakedly plain.”  

43. Professor Dworkin placed *Riggs* within his general theory of adjudication. He wrote, “[T]he Court cited the principle that no man may profit from his own wrong as a background standard against which to read the statute of wills and in this way justified a new interpretation of the statute.”  

44. The contrast between the viewpoints of those who disapprove and those who favor the *Riggs* decision is as much a difference in the methods of reading the statute as it is between the actual readings. The approach of Pound and Wade, who might be called “textualists,” emphasizes that the statutes contain no language specifically excepting claims such as Elmer’s. For the textualist, the approach taken by the court can only be described as engrafting an exception onto the text. The textualist would assume that Elmer’s claim must be allowed unless the statute had stated that “a murderer shall not inherit from his victim,” or contained words to that effect. The proponents of this view would allow nothing less than a specific prohibition to defeat Elmer’s claim.  

45. How would a textualist support his approach? No doubt some textualists would explain their assumptions by simply repeating the language of the statute and insisting that it contains no words of limitation. The words of the statute, summarized roughly as “Every will conforming to the following requirements shall be enforced according to its terms,” should, according to the textualist, be read according to their normal, everyday usage. For example, he might argue that the word “every” in normal speech is used to mean “without exception.”  

This argument, however, also contains a set of assumptions. First, it assumes that the word “every” has a discernible inherent meaning that always obtains regardless of the context in which it is used. Second, it assumes that the word “every,” whenever used, never admits of exceptions from the class to which it refers. And finally, the argu-

42. B. Cardozo, The Nature of the Judicial Process 42 (1921).  
44. Dworkin argues that judges are bound to decide cases in accordance with “principles” concerning individual or group rights, and that these principles are derived from the political morality presupposed by the laws and institutions of the community. See R. Dworkin, Taking Rights Seriously 126 (1977).  
ment assumes that the statute as a whole is expressed in words which might well be uttered "every" day. Most statutes, however, are not drawn in "ordinary" language. Certainly nothing very similar to the New York Decedent's Estates Law is uttered in daily speech.\textsuperscript{46}

The textualist might, however, adopt a different approach to support his method of interpretation. He could develop a theory that would link the meaning of the text to the legislature's intention. This theory, however, would also rest on assumptions or beliefs that we would have to share if we were to be persuaded. Thus, the textualist's argument would be based on a logic of persuasion, not a logic of demonstration. The textualist could argue, for example, that a legislature which did not include an express exception in the statute could not have intended the result in Riggs. This argument depends on the "fiction" of legislative intent. Legislatures, however, are corporate authors, and do not necessarily speak with a unified intention.\textsuperscript{47} The majority voting in favor of the statute may not have agreed on its meaning. Moreover, individual legislators may not have been concerned with the potential for a problem like the one that arose in Riggs when they voted in favor of the statute.\textsuperscript{48} Where this lack of awareness exists, the textualist will face a problem bringing him to the frontiers of the philosophy of language. May the legislature be deemed to have intended anything that was not consciously on the minds of a majority of legislators at the time of enactment?\textsuperscript{49}

The textualist might buttress his assumptions about legislative intention with arguments from legislative history.\textsuperscript{50} He could attempt to show that the problems which occasioned the consideration and passage of the statute do not suggest the existence of an intention to create any exceptions.\textsuperscript{51} Reliance on legislative records, however,

\begin{footnotesize}
\textsuperscript{46} For excerpts from the New York Decedent's Estate Law, see note 32 supra.
\textsuperscript{47} See MacCallum, Legislative Intent, 75 Yale L.J. 754, 755-56 (1966).
\textsuperscript{48} See Hart and Sacks, supra note 15 at 98.
\textsuperscript{49} See L. Wittgenstein, supra note 27, at 217e ("The intention with which one acts does not 'accompany' the action any more than the thought 'accompanies' speech. Thought and intention are neither 'articulated' nor 'non-articulated'; to be compared neither with a single note which sounds during the acting or speaking, nor with a tone.").
\textsuperscript{50} Commentators also disagree about whether the court may take into account its estimate of what the legislature would have done had it considered the question. Compare Burnet v. Gugenheim, 288 U.S. 250, 285 (1933) (Cardozo, J.) ("which choice is it more likely that Congress would have made?") with Frankfurter, supra note 10, at 539 ("thus to frame the question too often tempts inquiry into the subjective."). See also Curtis, A Better Theory of Legal Interpretation, 3 Vand. L. Rev. 407, 415 (1950) ("better deal with the future than the past, better pay a decent respect for a future legislature than stand in awe of one that has folded up its papers and joined its friends in the country club or in the cemetery"); MacCallum, supra note 147, at 773 ("But what he [the legislator] did not think of does not make a difference unless he would have expected it had he thought of it.").
\textsuperscript{51} Records of committee hearings or floor debates may provide a basis for drawing such inferences.
\end{footnotesize}
would present the same problem as reliance on the statutory text itself. Legislative records are also texts and do not come to the reader already interpreted. A reader's interpretation of these texts, therefore, must rest on a set of assumptions or beliefs about the setting in which he encounters them.

Finally, the textualist might offer an argument based on efficiency. To avoid the difficulty and uncertainty of interpreting statutory language and legislative history, the textualist might propose a "law" of interpretation. For example, he might suggest a rule that general language should be read without exception. If such a law existed, the legislature would be presumed to know that it will be deemed to have intended no exceptions in a statute unless they are "expressly" included. Even if we ignore the certainty that the rule would lead back into the interpretive thicket that it was designed to circumvent, the textualist's stance here is of a piece with his others. He has proposed the acceptance of a set of assumptions, how the legislature "shall" be taken to speak, that will render the meaning of legislation determinate. Only if this set of assumptions is accepted, and a "law" of interpretation is adopted, can his attempt succeed.

It is important to see how far the textualist, while attempting to defend his original position, would have to depart from it. From the notion that the text carries a meaning on its face, he would necessarily move to find the source of meaning in "normal" usage, legislative intention, legislative history, or presumptions created for administrative convenience. In essence he would become a "contextualist," whose position, like that of Cardozo, Hart and Sacks and Dworkin, presupposes the situation in which interpretation occurs.

Once he has surrendered his pure literalism, the textualist in each instance will have asked his audience to share certain beliefs and assumptions. He will have asked, that is, that they join in what might be called a "community of interpretation." I use the term "community of interpretation" as a way of speaking about the power of institutional settings, within which assumptions and beliefs count as facts. Membership in a community of interpretation means that one has accepted its beliefs. These beliefs determine readers' strategies of interpretation. Within a community of interpretation a text may be considered to be a self-interpreting and literal object, a reflection of

52. For a proposal that such "laws" be created, see Silving, A Plea for a Law of Interpretation, 98 U. Pa. L. Rev. 499 (1950).
53. See HART AND SACKS, supra note 15, at 98.
54. In addition to these doubts about such a "law," it is an open question whether the courts have the constitutional authority to impose rules on the legislature concerning the manner in which the latter shall conduct its affairs. See id. at 101.
55. See text surrounding notes 57-66 infra.
56. This term was first used by Josiah Royce. See 2 J. ROYCE, THE PROBLEM OF CHRISTIANITY 211-75 (1967). See also Fish, supra note 27, at 483-84; Michaels, supra note 26, at 395.
legislative intention, or a product of the legislature’s observance of a “law” of interpretation. Within a given community of interpretation the reader may believe that he is separate from the text, and can be considered a disinterested interpreter of it. But this separation of reader and text is only possible because membership in that community of interpretation often renders one’s central beliefs transparent. These beliefs then become matters of common sense, and are so indisputable that their role in constituting the very objects of understanding goes unrecognized.

Thus, those who suggest that a text is an object entirely independent of its readers are ignoring the sense in which the bedrock beliefs of its readers actually constitute the text. Those, however, who suggest that reading is an individual, subjective activity equally ignore the idea that the reader is always within a community of interpretation, the acceptance of whose beliefs affects the meaning he attributes to a text. Our very selves, then, are the product of shared understandings. Under this view the notion of individual subjectivity in interpretation would become empty.

Since we are always operating within a community of interpretation, it is always possible, indeed necessary, to speak of texts as separate from their readers. Thus, the textualist’s strongest asset is the human tendency to objectify—to put things “in” texts and then to find them there. The textualist’s arguments may therefore appear to be derived from the nature of the text even though their function is to provide support for his particular conception of the nature of texts.

A different approach is taken by the contextualist, who does not begin with the text alone. His approach requires him to begin with the text together with its surroundings. He must build a theory of meaning that links text and context. When this linkage is examined, however, we find that the contextualist’s arguments are not derived from the objective nature of the statutory text. Rather, they rest on beliefs which bring into being the text for whose existence they had argued. The dilemma of the contextualist, as we might call Cardozo, Dworkin, and Hart and Sacks, stems from his implicit acceptance of the textualist notion that principles of interpretation can be derived from the nature of the text being interpreted.

In discussing Riggs v. Palmer, for example, Professors Hart and Sacks suggest that the court could have made use of a presumption that the legislature would not contravene the fundamental principles and policies of the common law without so indicating in “unmistakably plain” language. This proposal for a law of interpretation was designed to preserve the “precious inheritance” of “deeply-embedded principles and policies,” the context surrounding the statute. Like

58. Id.
the textualist's proposal for a law of interpretation, this recommendation rests on a set of beliefs and assumptions. Does the legislature necessarily speak in "unmistakably plain" language whenever it creates an exception to a "deeply embedded" principle? Is it appropriate for a court to dictate the form in which the legislature shall communicate its intentions? Answers to these questions depend on assumptions which make the statute what it is for the contextualist who follows Hart and Sacks' proposal—a text which never contradicts common law principles without doing so in a prescribed fashion. If such assumptions were not in force, the statutory language might well have a different meaning.

Professor Dworkin also explains Riggs as a case in which a statute was read against a background standard of common law principles.59 For Dworkin, statutory interpretation calls for the application of a special political theory which provides a better justification for the statute than any alternative theory.60 His examples suggest that a "special political theory" is a set of beliefs about the problems the statute was intended to deal with and about the factors the legislature might properly have considered when framing it.61 Using the special political theory, the contextualist makes sense of the statute. Yet for Dworkin, language still plays a limiting role in interpretation. He emphasizes how great a role the canonical terms of the statute play in the process.62 Thus his interpreter's special political theory is to be brought to bear only within the limits of the statutory language itself.

Dworkin's position raises problems similar to those which faced the textualist. How do the "canonical terms" of the statute set the limits of plausible interpretations? Like the textualist, he must ask his audience to adhere to a set of beliefs which, when accepted, will render the semantic limits of the statutory language determinate. For example, the court in Riggs understood the limits of the statutory language not by reading the words of the statute, but by isolating its purpose, "to enable testators to dispose of their estates to the objects of their bounty at death."63 From that purpose the court derived the legislative intention. Purpose was logically prior to intention, and set the context within which the semantic limits of the statutory language came into being.

To defend against the textualist charge that such an interpretation ignores the language of the statute and creates a new meaning for it, contextualists such as Dworkin, or the Riggs court, must account for

59. See text at note 45 supra.
61. See Dworkin, Hard Cases, supra note 28, at 1086-87.
62. See id. at 1087-89.
63. 115 N.Y. at 509, 22 N.E. at 189.
their understanding of the statute’s purpose. They must, at least implicitly, call upon that “special political theory” which was thought to come into play only after language had set the bounds on interpretive possibilities. Of course that theory, which best justifies the statute within the legislature’s general responsibilities, will be the product of a fundamental set of beliefs which the interpreter brings to his task.

In short, the contextualist no more ignores the language of the statute than the textualist really limits his reading to the words alone. They both do what all readers do: encounter the text in a situation, which unavoidably includes the beliefs that the reader holds. When the interpreter has these beliefs in common with others, then they are, for that community, “facts.” These facts are not immutable, as the objectivist would have it, nor individual or arbitrary in the sense that the subjectivist or radical realist might suggest. They do provide objectivity, however, within a community of interpretation where they need not be questioned.

The contextualist need be on the defensive, then, only if he accepts the textualist conception of the statutory text as an object whose nature determines its own method of interpretation. That conception cannot be maintained without acceptance of the beliefs about the legislative process that support it.\(^{64}\) If, however, the contextualist recognizes that he is arguing for a particular conception of the institution of statutory interpretation, rather than from some fixed essence of the statutory text, he need not accept the idea of the textual object as his starting point. Instead, his arguments urge adopting an approach that actually brings the meaning of the text into being. Since he is attempting to persuade his audience to adopt his view of textuality, the contextualist’s references to the nature of legal texts are really efforts to show the members of the audience that they already belong to the same community of interpretation.

It should come as no surprise that interpretations of literary works also depend on communities of interpretation for their persuasiveness. Answers to the question posed by “The Tyger,” for example,\(^ {65}\) simply are not satisfactory until the reader accepts the premises of the critic proposing the interpretation. The premises vary. For example, Kathleen Raine, who inaugurated the modern debate about the tiger and his creator, has argued that the tiger is the product of an evil force. She seems to conclude that the two animals of the poem, the tiger and the lamb, are in sharp contrast. “The lamb is a symbol of the principle in nature that willingly dies in order that others may live . . . the tiger is the symbol of the opposite principle.”\(^ {66}\) In fact,

\(^{64}\) For a discussion of these assumptions, see text accompanying notes 47 to 54 supra.

\(^{65}\) See text accompanying note 1 supra.

\(^{66}\) Raine, supra note 2, at 43.
however, this “conclusion” was her starting point. From this assumed contrast between the tiger and the lamb Ms. Raine reasoned that an evil creative principle must be responsible for the tiger. She found the evil creator in the “demiurge,” the third person of the Gnostic and Cabbalistic trinity which Blake had studied.67 Yet she felt compelled to indicate that “the grandeur of the poem does suggest some such emotion of admiration for the tyger.”68

E.D. Hirsch, although using a similar approach to interpret the poem, was convinced that the tiger and the lamb had the same creator. “There can be no doubt,” he wrote, “that ‘The Tyger’ is, among other things, a poem that celebrates the holiness of tiger-
ness.”69 Doubt, of course, is exactly what there can be about such a proposition. Having decided that there is no doubt, however, Hirsch was able to “demonstrate in the poem itself” the presence of a holy tiger, the product of the biblical and Miltonic imagery which sees everything that God created as good.70 So, however, had Ms. Raine been able to “demonstrate” the presence of an evil tiger in the same poem.

A number of critics have reacted strongly to the approaches of Raine and Hirsch. J. L. Swingle, for instance, has rejected their reliance on Blake’s own preoccupations,71 believing it to be misleading.72 Swingle has argued that the critic must decide “whether he wants to understand Blake or ‘The Tyger.’”73 His view, it seems, is that interpretations such as those of Raine and Hirsch have led us astray, and that the proper solution is to focus on the poem alone.

As we saw, however, in examining the textualist position, it is impossible to get back to the text without adopting a set of beliefs that makes the text something in itself. Swingle does exactly this, but with the innocent sense that he has simply removed what was standing between the reader and the poem. “Understanding ‘The Tyger,’” he asserted, “involves accepting the fact that the world of the poem prohibits understanding.”74 It is not, of course, a fact that the world of the poem prohibits understanding until we accept it as a fact. Once we have done so, “The Tyger” is a poem that only asks questions, just as for those who have accepted Raine’s or Hirsch’s facts, “The Tyger” is a poem that also answers them.

None of these critics was wrong in making assumptions which led them to find meaning in “The Tyger.” On the contrary, interpretation

67. Id. at 48.
68. Id. at 43.
69. E. D. Hirsch, supra note 4, at 248.
70. Id. at 250.
71. See text at note 67 supra.
72. Swingle, supra note 5, at 66.
73. Id. at 65.
74. Id. at 67.
of the poem could not have proceeded in any other way. If any meaning is to be discerned, there must be shared assumptions and beliefs which will allow the work of understanding to go forward. Like the statutory interpreter who claims that the proper approach to interpretation can be deduced from a text with an independent status, the interpreters of “The Tyger” each claim to be “discovering” a poem that is independent of their method of discovery. Such independence of reader and text, however, only seems to exist when shared assumptions produce an undisputed method of interpretation. In literary study, as in law, this ideal is likely never to be achieved, and the differences that are the product of multiple communities of interpretation will always be present.

IV. INTERPRETIVE ANARCHY OR STABILITY?

The differences between statutory and literary interpretation, then, are differences in communities of interpretation. Law and literature are structurally different disciplines and interpreters within each discipline use different strategies to aid in understanding their texts. These differences, however, are not prescribed by intrinsic differences between statutory and literary language or texts. In an important sense differences in structures and strategies actually constitute the differences between statutory and literary language. The court deciding Riggs v. Palmer, for example, was authorized to render a final adjudication of the meaning of a statute as it applied to the facts of the case. There is no analogous central authority in the literary world, although the imagination of a Huxley is no longer required to see that this is a possibility.

The Riggs court’s conception of its proper relation to the legislature allowed, and in a sense required, that it speak the language of intention in interpreting the applicable statute. That statute was an “intentional object,” the product of its authors’ purposes because the court’s interpretive strategies made it so. These strategies are still so forceful that it would be astonishing to find a court today waxing eloquent about the alliterative qualities of the statute, the rich ambiguity of the word “person” in a phrase such as “Any person may make a will,” or the symbolism of the legislature’s confrontation with the problems of mortality. It would be equally surprising for a literary critic to suggest that the meaning of the poem “The Tyger” depends on the effect of certain fundamental maxims, for example, that there is a God and that he is benevolent, which no poem may supersede.

Competent, professional interpreters of statutes know that there is no symbolism in statutes. Professional literary critics know that, today at least, poems are not interpreted against background standards of morality in the same way as are statutes. These professionals have been trained in disciplines guided by detailed codes of interpretive
behavior. By virtue of conformity to these codes, their interpretations are both more competent than that of the initiate and more reckon-able.\textsuperscript{75} Indeed, part of their work may well be seen as “teaching” others how to read.

The theoretical controversies that now rage in both law and literary theory can be seen as concerned with characterizing the “knowledge” possessed by the competent reader. In jurisprudence, there has been an almost molecular examination of the propriety of judicial discretion in interpreting a statute or previous decision.\textsuperscript{76} The issue recently has focused on Professor Ronald Dworkin’s powerful formulation of the “rights thesis.”\textsuperscript{77} In elaborating his thesis, Dworkin has contended that in a developed legal system there is almost always one right answer to any legal question.\textsuperscript{78} He argues that even when an answer is not demonstrable, the ground rules of any enterprise may characterize one answer as “right” because it best satisfies the enterprise’s criteria of correctness. According to Dworkin, whether there is a right answer to a legal question will be a function of two factors: (1) “the density of the information supplied by the settled law” and (2) “the degree to which the question put by the case could be thought independent of whatever information is so supplied.”\textsuperscript{79}

Dworkin’s citation of these two factors implies that he is arguing \textit{from} a preconception of the character of legal texts rather than \textit{for} his approach to interpretation. Where there are few precedents, the information an interpreter has at his disposal will be sparse. He suggests, however, that in a developed legal system there will be dense “intersections and interdependencies of different legal doctrine.”\textsuperscript{80} From this it would seem to follow that in a “developed” legal system there will almost always be one right answer to every legal question. Although it might be assumed that the “density of information” is somehow independent of the belief that the information contains a single right answer, this assumption is questionable; the two are closely connected. For the stronger the belief that the text, a body of settled law, contains a single right answer, the stronger would be the tendency for its readers to perceive the infor-

\textsuperscript{75} See K. Llewellyn, \textit{supra} note 28, at 17-18.


\textsuperscript{77} See R. Dworkin, \textit{supra} note 44, at 82-90.

\textsuperscript{78} See Dworkin, \textit{No Right Answer?} in \textit{Law, Morality and Society} 58 (P. Hacker and J. Raz eds. 1977).

\textsuperscript{79} \textit{Id.} at 83-84.

\textsuperscript{80} \textit{Id.} at 84.
mation it contains as sufficiently dense to supply one, at least if such "density" were thought necessary to the existence of a right answer. This would be as much the case in an "underdeveloped" legal system as it would be in a developed one.

Similarly, the notion that the question put by the case might be independent of whatever information is supplied by the settled law apparently assumes that the material in a text could be independent of its readers' interpretive strategies. Such independence, however, could not exist, since there is an intimate connection between the question put by the case and the information used to answer it. The more strongly the reader believes that there is one right answer to every legal question, the more likely he will be to find that answer in whatever information is supplied.

On the other hand, much of the extraordinary power of the rights thesis, and the concomitant notion that there is one right answer in legal disputes, lies in its normative rather than descriptive qualities. In this sense the thesis is not an argument about the independent character of a collection of texts, the law, but rather an argument for Dworkin's conception of the interpretive process. From this normative point of view, the thesis has the value of what Professor H.L.A. Hart in another context has called a "regulative ideal." This regulative ideal obligates the courts to justify their decisions on grounds acceptable to the legal community. For Dworkin, the only acceptable grounds are the principles embedded in the body of settled law. As a result, there is no room left for judicial discretion. Under this view, even decisions in "hard" cases can be subjected to critical scrutiny in a way that discretionary decisions cannot, since the reasons for a decision must be grounded in a common body of knowledge. Part of the appeal of the rights thesis thus lies in its elimination of judicial discretion from the interpretive process. It not only provides a rationale for the enormous adversity or benefit that judicial interpretation sometimes visits on individuals, but also carries the message that such consequences could not justifiably be otherwise.

Students of the law may at first glance find little here that is analogous to the study of literature. The results of a decision about the meaning or quality of a poem hardly seem comparable to the

81. Professor Dworkin seems to adopt this view when, in discussing the analogy between the judge and the referee in a chess game, he indicates, "The proposition that there is some "right" answer . . . does not mean that the rules of chess are exhaustive and unambiguous; rather it is a complex statement about the responsibilities of its officials and participants." R. Dworkin, supra note 44, at 104.


83. See Dworkin, supra note 44.

84. Id. at 125.
consequences of a lawsuit. Literary critics, however, still do a great deal of sorting and categorizing before lay readers come face-to-face with literature. Moreover, every discipline has a profound need to have right answers to the questions it studies. The members of a discipline or profession must be able to see themselves as possessing knowledge or expertise that is not available to those who are not members. Such knowledge provides the ability to discern right answers. Thus, the possession of such knowledge in fact may be what defines membership in the profession.

Certainly one of the main efforts of an individual’s literary study is learning to be a sensitive reader, and for many this means the ability to reveal what beauty or truth is in the text. Other conceptions of the nature of interpretation are likely, therefore, to be very upsetting to those who pride themselves on possessing this ability. Those who suggest that interpretation is merely an exercise in individual subjectivity and that there are no proper limits to what can be said about a text’s meaning imply that the professional’s interpretation is no better than anyone else’s. Those who hold that meaning is the product of beliefs shared within communities of interpretation suggest that the truth which the professional critic is so adept at discovering is grounded not in an unchanging text, but in the critic’s own institutional allegiances. Both views threaten the discipline’s self-image.

Thus, we find seemingly disparate theoretical approaches in service of the discipline’s self-preservation. Wimsatt’s classic anti-intentionalism rested not simply on his disrespect for interest in authorial intention, but on his conviction that the discipline of literary study should be primarily concerned with the semantics, syntax, and language of poetry.85 E. D. Hirsch, a theorist violently opposed to Wimsatt’s position, justified his intentionalism by indicating that searching for the author’s meaning “might help correct some of the most serious faults of current criticism (its subjectivity and relativism) and might even make it plausible to think of literary study as a corporate enterprise and a progressive discipline.”86 Perhaps the most open expressions of this theme of disciplinary self-preservation come from Wayne C. Booth and M. H. Abrams, both admitted interpretive “pluralists.” Despite his recognition of the validity of many critical points of view, Abrams believes that the contention that literary meaning is indeterminate “goes beyond the limits of pluralism, by making impossible anything that we would account as literary and cultural history.”87 Booth accurately summarizes Abrams’ argument as “Stop, you’re killing me.”88 He then takes what seems to be the

85. See Wimsatt & Beardsley, supra note 10, at 10.
86. See E. D. Hirsch, supra note 10, at 209.
87. Abrams, supra note 21, at 425.
88. Booth, supra note 22, at 418.
ultimate step in defense of the discipline. He does not reject any theory of meaning. Indeed, he seems to accept several, although they contradict each other. Rather, Booth embraces this pluralism and anchors its limits only in what is in his view necessary "to reconstruct a critical commonwealth"—a willingness of the proponent of one interpretive approach to learn from that of another.

These defenses of interpretation suggest the threat felt by the discipline from arguments that call into question the reality of the objects, texts and facts from which the central tenets of the discipline seem to be derived. Such arguments, however, are not threats to the discipline, since the forces which cement it are not those which the arguments attack. The objects, texts and facts with which this and every other enterprise works are real in the only way that anything is real. And the knowledge that we all possess is therefore secure in the way that all knowledge is secure, by virtue of its acceptance within a community of interpretation whose existence is a prerequisite to the production of knowledge itself.

V. Conclusion

In describing the concerns which law and literature have in common, I have obviously ignored much of what distinguishes the two fields. My point, however, has been to demonstrate that the source of what distinguishes the two is the same as the source of their common concerns. The two fields of endeavor are closely related. Members of each must confront the problems of textuality, both as part of their everyday experience and, less directly, as a way of instilling in themselves a sense of the limits of their disciplines. A better understanding of the significance of these problems cannot help but further enrich both.

89. Id. at 423.