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Foreword

Guest Editor.

To Focus on Diversity? How do we identify such?

At the International Journal of Law, Language & Discourse our central theme impacts scholars and practitioners across the globe, namely "*the nexus of law, language, and discourse*." And who are the scholars? Academics in universities who lecture on Law, many of course being legal practitioners doing a part time job. But the journal transcends what one would myopically call "law" and ventures into other fields, for example, linguistics, second language acquisition and the newly identified area of Translanguaging which will undoubtedly play a great role in underpinning court room behavior.

Till now Translanguaging has the been the sole enterprise of the field of Second Language Acquisition journals, albeit they seem to struggle with identifying a definition of what it actually is – though I believe the concept will gain traction the more research is done, and this will underpin this journal at some future stage. See for example Runcieman, A, 2018.

Of course, court-room trial lawyers "…play with words…" giving them the most favorable meaning for their client, yet on the whole, these lawyers have no idea of the meaning of 'translanguaging' . "This chapter investigates codeswitching and insertion in the speech of litigants, relating both phenomena to the interactional and macrosociolinguistic context of interpreter-mediated small claims court proceedings. All litigants who speak a language other than English codeswitch to English or use English insertions. This demonstrates the degree to which they participate in the English part of the interaction and relate their own talk to that of the arbitrator and other English-speaking participants. Both codeswitching and insertions are used in interactionally meaningful ways, and they can be interpreted as instances of accommodation. At the same time, these practices conflict with interpreting, as insertion/borrowing blurs the boundaries between the languages, while codeswitching to English competes with the interpreter's institutional task of speaking in English for the litigant. It also, challenges the epistemic authority of the interpreter to determine the meaning of the testimony given by speakers of a language other than English." Angermeyer. P. 2015.

Thus, it is clear this journal has a significant future role to play in court room procedures-it will mean court staff and indeed learned judges must be made aware of the principles of translanguaging, for it is likely injustices will occur if the translanguaging is misinterpreted. As such the notion of further and better training for court room interpreters becomes critical if justice is not only seen to be done but is done.

And so, we come to this edition with 2 key papers.

The paper by Stefan Wrbka focuses on the European Case Law Identifier Search Engine, which the European Commission launched in May 2016 as a central gateway to national and EU case law. At the centre of the project stands the wish to improve the accessibility and transparency of case law to stimulate cross-border trade. The study links these considerations to the pluralistic legal certainty concepts introduced by Canaris and Bydlinski and by doing so aims to evaluate the search engine potential from the viewpoint of multilingualism of its implications for legal predictability, the practicability of the application of law and legal accessibility.

Next Wm. Dennis Huber presents "Law, language, and corporatehood: corporations and the U.S. Constitution." The discourse regarding the status and standing of corporations vis-à-vis the Constitution has consistently been misdirected by the Supreme Court. The issue that has caused so much consternation concerns whether a corporation is a "person." The reason the discourse regarding the status and standing of corporations vis-à-vis the Constitution has been misdirected is the consequence of the very nature of the question: "is a corporation a person in the constitution?"

The question preconditions the answer with the fundamental assumption that the discourse can take place using person-centered terms. To ask whether a corporation is a "person" in the Constitution places the cart before the horse. His paper argues that the terms "corporate person" and "corporate personhood" be abandoned because they are, grammatically and syntactically, nonsense.

We now look forward to the coming years and what we see as a major transition from an old way of life to one underpinned by translanguaging and its complexities, to the digital revolution that is already upon us. Future editions no doubt will look to these changes and how they affect not only the legal profession but the academic legal world including such tangential areas as interpreter training, court room interpreter training and so on

Angermeyer, O. 2008. Creating monolingualism in the multilingual courtroom. https://journal.equinoxpub.com/SS/article/view/6716

Angermeyer. P. 2015. Codeswitching in the courtroom. Speak English or What? Codeswitching and Interpreter Use in New York City Courts.

Runcieman, A 2018. Translanguaging and translation: the construction of social difference across city spaces. https://www.scinapse.io/papers/2616220756

Stefan Wrbka*

The European Case Law Identifier Search Engine and Multilingualism: A Legal Certainty Perspective on Business-to-Consumer Situations

Abstract: This paper focuses on the European Case Law Identifier Search Engine, which the European Commission launched in May 2016 as a central gateway to national and EU case law. At the centre of the project stands the wish to improve the accessibility and transparency of case law to stimulate cross-border trade. The study links these considerations to the pluralistic legal certainty concepts introduced by Canaris and Bydlinski and by doing so aims to evaluate the search engine potential from the viewpoint of multilingualism of its implications for legal predictability, the practicability of the application of law and legal accessibility. The focus is put on the relevance for cross-border business-to-consumer situations, which constitute one of the most essential challenges for strengthening the internal market.

Keywords: European Union, legal certainty, consumer law, ECLI, European Case Law Identifier search engine, linguistic diversity

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1 Introduction

In May 2016 the European Commission (Commission) launched the European Case Law Identifier Search Engine (ECLI-SE) on the e-Justice Portal.[1] According to accompanying Commission press releases, the ECLI-SE aims to facilitate European access to justice by providing a user-friendly instrument to search for case law from the EU Member States (Member States) and some supra-/international courts centrally with the help of one single interface (European Commission, 2016a; European Commission, 2016b). All relevant stakeholders, i.e., the judiciary and other representatives from the legal profession, legal

[1] https://e-justice.europa.eu/content_ecli_search_engine-430-en.do.

academics, businesses and consumers should, so the Commission, be able to benefit from this new gateway. If that were true, the ECLI-SE could eventually contribute to the strengthening of EU cross-border trade and the internal market in general.

With this paper I would like to take a closer look at the impact of the ECLI-SE. More precisely, I intend to comment on the ECLI-SE from a legal certainty perspective. In this context I will primarily focus on cross-border B2C situations and try to answer the question as to whether (and to what extent) the ECLI-SE will meet the requirements of enhancing the accessibility and simplifying the understandability of foreign case law (as defined by the Commission and other EU stakeholders).

The paper will commence with background information on the ECLI before outlining the ECLI-SE and its most relevant features. It will then continue with a look at legal certainty in general and legal certainty in the EU and the Member States in particular. Comments on the ECLI-SE from a legal certainty perspective with a special focus on B2C transactions in the EU and recommendations for further steps will round off this paper.

2 The European Case Law Identifier (ECLI) and consumer law

Over the last roughly four and a half decades initiatives to enhance EU cross-border trade and the internal market have resulted in various instruments with the aim to simplify transactions within the EU. With respect to EU consumer law, the development of more general rules on the one hand and more specific B2C concepts on the other have run more or less parallel ever since.

From a private international law point of view, for example, the Rome I Regulation and its predecessor, the 1980 Rome Convention, deserve extra mentioning. Rules on international civil procedure, in particular the Brussels regime and the Lugano Convention add important procedural frameworks. All of them contain special consumer provisions. In the context of B2C transactions numerous more specific directives and regulations have introduced tailor-made, to some extent harmonised specific substantive and procedural law norms and standards. At a different occasion I already dealt with the latter group, i.e., special B2C instruments in more detail and tried to identify what kind of substantive and procedural law framework(s) would be most suitable to stimulate cross-border B2C transactions in the EU (Wrbka 2015). My observations there as well as a development at the EU level which has not gained a degree of attention comparable to the discussions in the fields of substantive and procedural consumer law yet—the creation of the European Case Law Identifier (ECLI)—have added one more interesting layer to the Europeanisation debate of consumer law in the EU. In the following I would like to outline and discuss the ECLI and the recently introduced accompanying search engine—the ECLI-SE—with a special focus on consumer law.

The first question that needs to be answered is a quite obvious one: “What is the

ECLI?". Over the years a mix of several factors has shown the need to introduce a mechanism that would allow for an easier identification of case law in the EU. Policymakers at the EU level had intensified their endeavours to standardize B2C law in the Member States. Although they have partially accomplished this goal, national policymakers have successfully managed to reserve a considerable degree of legislative self-determination by limiting the extent of full harmonisation and keeping the material scope of EU legislation under control. Most recent EU legislation in the field of consumer law follows full targeted harmonisation (at best) and regularly takes a narrower approach than originally envisaged by the Commission. Overall, one can justifiably argue that attempts to extend EU consumer legislation have come to a certain standstill.

At the same time, however, the wish to enhance cross-border transactions in the EU has further gained momentum. The Commission started to shift its priorities in the B2C sector to electronic sales and services—e-commerce seems to rank high on the legislative agenda. Online Dispute Resolution (ODR) and the Digital Single Market (DSM) initiative can be listed as examples. In addition to the e-commerce debate, substantive (consumer) lawmaking has generally and increasingly been accompanied by stronger procedural law efforts to simplify and speed up dispute resolution. Initiatives that include specially crafted injunctions, shortened procedures for small claims as well as alternative means of dispute resolution (including the just mentioned ODR) illustrate this. The Europeanisation debate has transcended the substantive law border and has constantly been extended to procedural law. Another recent project, the e-CODEX initiative constitutes an additional pillar of strong practical relevance, as it aims to facilitate cross-border information exchange in procedural matters. Most of these examples show that EU stakeholders have increasingly taken account of new technologies, most notably the internet.

In the midst of attempts to take the consumer acquis to the next level, additional considerations emerged. It had became obvious that a growing cross-border market would—in addition to advanced substantive and procedural law rules to regulate cross-border situations—necessitate an easier identification and enhanced research of case law. Initiatives of a more technical nature were considered as being the most suitable supplementary tool. Several pertinent online projects have been launched. Some of the more prominent examples include Caselex, Dec.Net, Jurifast and JURE. The EUPILLAR database, launched in early 2017, is one of the latest additions to this list. Collections by academic research groups should not be left unmentioned. With respect to consumer law, for example, the case law database installed in the framework of the EC Consumer Law Compendium has to be pointed out. Admittedly, most of these projects were quite ambitious and—within a relatively narrow scope—useful. But none of them was sophisticated and comprehensive enough to offer a system that could significantly improve the accessibility of case law.

In 2008 initiatives to take the issue of simplified case law identification to the pan-EU

level reached their first "official" peak. EU and Member State protagonists stressed the need to enhance the knowledge of case law throughout the EU in the European Parliament (Parliament) and at workshops (co-)initiated by the EU (European Parliament, 2008; Van Opijnen, 2008a; Van Opijnen, 2008b). Ultimately it might have been a report of the Working Party on Legal Data Processing (e-Law WG) (installed by the by the Council of the EU [Council]) that convinced EU stakeholders to take more concrete action.[2] The e-Law WG deliberated on and elaborated a possible framework for an enhanced case law identification mechanism. Based on the research work of the e-Law WG, the Council published a statement in early 2011 (ECLI Council conclusions)—the idea to introduce and institutionalise the ECLI as an alternative tool to improve access to justice was born (Council 2011).[3] Not only the Council, but also the Commission stressed the importance of the ECLI from an accessibility perspective and—after the launch of the ECLI—explained that the ECLI was introduced "to facilitate easy access to … national, foreign and European case law."[4] The "Building on ECLI" project (BO-ECLI), initiated by the EU to enhance the ECLI (and its accessibility), adds that the ECLI serves the function of increasing the overall transparency of case law and links both ideas—improved accessibility and transparency—to the pivotal rule of law concept. In the words of BO-ECLI this sounds as follows:

> In the light of article 6 of the European Convention on Human Rights, accessibility of case law is necessary to ensure scrutiny of the judiciary by the public. By improving this accessibility, both in qualitative and quantitative sense, transparency of the judiciary will be reinforced and the rule of law strengthened.[5]

Summarising these statements one should note that the ECLI aims to strengthen both the transparency of and accessibility to case law and by doing so should—as will be explained briefly—contribute to legal certainty at a pan-EU and inter-Member State level.

Without going into technical details—this is not the intention of this paper and should be reserved for legal informatics commentators—the instrument, i.e., ECLI, can be described as a code that identifies case law, in principle, at the Member State and EU levels. The ECLI code consists of a set of five components:

(1) The term "ECLI" (to identify the label as a ECLI-reference);
(2) A code to link the decision to a certain country, the EU or an international organization (country code);
(3) A code to identify the court that issued the decision (court code);
(4) The year of the ruling;

[2] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017377%202009%20INIT.
[3] On the issue of accessing case law see, in particular, its § I.2, § I.3 and § 4.2.(d) of its Annex.
[4] https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do?init=true.
[5] http://bo-ecli.eu/ecli/benefits.

(5) An intelligible ordinal number to distinguish the decision from other decisions of the same court and published in the same year (ordinal number).

The five components are separated by colons as follows: [ECLI]:[country code]:[court code]:[year]:[ordinal number]. A judgment by the General Court of the Court of Justice of the European Union (CJEU) could, for example, look as follows: ECLI:EU:T:2013:257. This ECLI would refer to the 257th document of the General Court (abbreviated with "T") of the CJEU published in 2013.

With respect to items 3 (court code) and 5 (ordinal number) above, the participating Member States and institutions enjoy—within a predefined range—certain freedom. Although the use of the ECLI clearly identifies court decisions, the court code and ordinal number components are not fully standardized in a way that national, international and supranational stakeholders (ECLI-users) would have to fundamentally align their traditional approaches to the identification of case law. Stakeholders are free to abbreviate their courts in any unambiguous way and to apply ordinal numbers of their choice (only limited by some outer ECLI parameters that most notably relate to the maximum number of digits to be used for the ordinal number).

As a supplement to the ECLI code, ECLI-users are further asked to introduce a set of metadata. This standardized metadata aims to facilitate the search- and accessibility of ECLI case law in particular by supporting the introduction of a searchable online database that is fed with ECLI data (Council 2011, § 2 Annex).

Applying the ECLI is not mandatory. Recent data of 2015 shows that (only) approximately half of the Member States are either already actively using the code or at least preparing its launch at the national level. At an supra-/international level, the Court of Justice of the EU (CJEU) as well as the European Patent Office and the European Court of Human Rights have already introduced the ECLI (Van Opijnen and Ivantchev, 2015: 166).

3 The European Case Law Identifier search engine (ECLI-SE) in brief

The ECLI project would not have been complete without the possibility of finding case law easily, fast and without costs. In this respect the ECLI Council conclusions—in §§ 3 and 4 of their Annex—set the basis for potentially important ECLI supplements. To increase the viability of the ECLI the Council asked to set up both an ECLI website (§ 3) and an ECLI search interface / engine, i.e., the ECLI-SE (§ 4). While the first shall aim to disseminate knowledge about the ECLI in general (including a link to the ECLI-SE on the ECLI website), the ECLI-SE had to be designed to offer a user-friendly gateway to ECLI case law to guarantee that the end-users (ECLI-SE end-users) had an actual chance to access ECLI data easily. By aiming to improve the access to case law the ECLI-SE has to be considered as a key factor in improving the level of legal certainty throughout the EU. I will return to this

concept at a later point.

The ECLI-SE, presented to the public on 4 May 2016, is crafted as a search interface that is supplied with ECLI data by the ECLI-users. Being a centrally accessible database, the ECLI-SE intends to offer the ECLI-SE end-users a one-stop shop when looking for case law from the EU, its Member States and some additional institutions (as shown in the previous chapter). To maximize the operability of the ECLI and the ECLI-SE, the Commission (the central institution in charge of the functionality of the ECLI-SE) and the Court of Justice of the EU (the ECLI co-ordinator) were chosen to monitor and—if and where found necessary—enhance the project.

The Commission decided to embed the ECLI-SE into the e-Justice portal, an interface that had been developed as an electronic tool to facilitate the involvement of EU citizens in EU-related topics offering information on selected substantive and procedural law issues. The actual launch of the ECLI-SE benefitted from preparatory work that was carried out by authorities in a handful of Member States and some institutions. Spain, the Netherlands, Slovenia, the Czech Republic, Germany as well as the CJEU and the European Patent Office took the leading role, contributing the vast majority of ECLI data to the ECLI-SE. One month after its launch the ECLI-SE offered already more than 3.5 million links to ECLI case law. The total number of published links has been increasing ever since and—at the time of writing this article—stands at more than 5.2 million results.[6] The ECLI-SE is free of use and—as of February 2017—can (with the exception of Irish) be accessed in all official languages of the Member States. The interface offers three types of searches: A simplified search where—as is the case with most online search engines—it suffices to input a term or a phrase into a search bar, a semi-advanced search tool (accessible via the "Wizard" button) that allows for a more refined search and an advanced search (accessible via the "More criteria" button).

With the help of the semi-advanced search function the search can be subdivided into the search for a group of words (in any order), an exact word / phrase or interchangeable alternative words. It is rounded off by the possibility to exclude search results that contain particular words / phrases. Explanations (accessible via "tip" buttons) guide the ECLI-SE end-user through the process.

The advanced search function goes even further. It introduces 14 additional search criteria that range from the ECLI of the case and the issuing institution to criteria such as language of the decision, its abstract or description and date of the decision or the relevant field of law. Explanations (again accessible via "tip" buttons) simplify also the advanced search. In practice, specifying search parameters is advisable in a variety of cases. A simple search for "consumer", for example, will—as of February 2017—lead to more than 19,000

[14] ECLI-SE search conducted by the author on 7 February 2017.

search results.[7]

The results page lists ECLI cases with their most relevant data. The following is an actual, random result example of a search I conducted on 8 June 2108 on "consumer law" and shall explain how the ECLI-SE works:

> ECLI:NL:GHDHA:2015:3876 NL
> ECLI provider: Raad voor de rechtspraak (Council for the Judiciary)
> Issuing country or institution: Netherlands
> Issuing court: Gerechtshof Den Haag
> Decision/judgment type: Judicial decision
> Date of decision/judgment: 26/05/2015
> Date of publication: 09/02/2016
> Wording of decision/judgment: This metadata is available in the following language(s) only: NL
> Field of law: Civil law
> Abstract: This metadata is available in the following language(s) only: NL
> Description: This metadata is available in the following language(s) only: NL

This data refers to a decision of one of the four Dutch Appellate Courts, i.e., the second highest courts in the Netherlands, the *Gerechtshof Den Haag*—more precisely to its decision with the judgment number 3876 (of 2015). Supplementary case law data, e.g., information on the publisher / creator of the ECLI data, can be found when one clicks on the ECLI in the first line of the result. Clicking on one of the language abbreviations in the main result screen will—depending on where one clicks—lead directly to either the decision / judgment itself, its abstract or a short description in the available language(s). In our case all three are limited to the Dutch language.

The ECLI is undeniably an ambitious project and at first sight seems to provide users with sheer infinite possibilities to locate, find & research on case law. In the following I would like to focus on the EU's belief that the ECLI and its search engine will strengthen legal certainty in the EU. In particular, I will discuss the ECLI-SE in the context of consumer law from a legal certainty perspective and try to answer the question if, and if yes to what extent, it is of actual benefit in B2C situations. Before doing so, however, I will take a brief look at the core concept(s) of legal certainty in general to define the parameters for my later commentation.

4 Legal certainty

4.1 Legal certainty in general

At first sight legal certainty seems to constitute a precise concept. A closer look, however, reveals that the term shows various facets. The notions of legal certainty might differ depending on the context in which it is discussed.

In legal academia legal certainty has been the subject of an abundant number of contributions. It would clearly go beyond the purpose and scope of this paper to pay due tribute

to all of them. I would like to limit my discussion to two commentators: Canaris and Bydlinski. Both break the certainty concept into pieces and show that it refers to several key ideas behind law in general and the rule of law in particular.

In the late 1960s Canaris presented his view on legal certainty in his *Systemdenken und Systembegriff in der Jurisprudenz*. Canaris argued that depending on the context legal certainty could be understood in different ways. He introduced the following certainty subdivisions: Legal firmness and predictability (*Bestimmtheit* and *Vorhersehbarkeit*), legislative and judicial stability and continuity (*Stabilität* and *Kontinuität*) and practicability of the application of law (*Praktikabilität der Rechtsanwendung*) (Canaris 1969: 17). Roughly two decades later Bydlinski (with his *Fundamentale Rechtsgrundsätze*) re-conceptualised the construct and added some more certainty features. According to Bydlinski one can distinguish between the following: Legal clarity (*Rechtsklarheit*), legal stability (*Rechtsstabilität*), legal accessibility (*Rechtszugänglichkeit*), legal peace (*Rechtsfriede*) and legal enforcement (*Rechtsdurchsetzung*) (Bydlinski, 1988: 293; Bydlinski, 2011: 325).

These examples can be used to illustrate that legal certainty has to be considered as a multi-faceted concept that encompasses important theoretical and practical issues. On a different occasion I explained that the certainty expressions identified above serve, in principle, either of two key goals and could be summarised in two groups. First, legal clarity, stability, predictability and transparency contribute to the general clarification of a legal situation. I referred to this certainty manifestation as "legal clarification" (Wrbka, 2016: 13). Legal accessibility, enforcement and the practicability of the application of law could, however, be understood as adding ideas of practical fairness. I called this function "legal rationalisation" (Wrbka, 2016: 13).

4.2 Legal certainty in a EU context

In EU policy- and lawmaking legal certainty is usually found in different contexts than in the Member States, where the general certainty notions of legal clarification and legal rationalisation dominate the agenda. The reason for this is obvious. Unlike Member States' governments and legislators, EU stakeholders have to concern themselves primarily with the question of how to enhance the internal market, i.e., how to get rid of perceived trade barriers between the Member States. This attributes both a new meaning and additional challenges to exploring and defining legal certainty at the EU level. The two larger sub concepts of legal clarification and legal rationalisation do not fully suffice to explain this endeavour.

When looking at EU consumer law- and policymaking one can primarily identify two issues that relate to legal certainty: Harmonisation on the one hand and the impact of linguistic peculiarities on the other.

Harmonisation of domestic law might arguably be the most obvious expression of legal certainty at the EU level. Related strategies have been revolving around endeavours to standardize rules that Member States had autonomously and diversely enacted at the domestic level. Traditionally, EU policymakers have considered the resulting fragmentation of national

laws as an impediment to the growth of the internal market. In this sense legal certainty has (in particular in a B2C context) to be understood as attempts to simplify cross-border transactions by flattening differences in the level of national consumer protection (Wrbka 2015, pp. 217–221 with further references). Based on the belief that the older technique of introducing minimum standards and leaving Member States significant legislative discretion (by basing EU consumer law largely on minimum harmonisation) had not been sufficient to create a market free of national legal deviations, EU policymakers have gradually shifted their focus towards increased full harmonisation.

A number of pertinent EU consumer laws include statements that can be used to illustrate this. One of the most recent examples is the new Package Travel Directive of 2015 (2015 Package Travel Directive) that in a (targeted) full harmonisation way replaced the older minimum harmonised Package Travel Directive of 1990. The new regime does not simply aim to enhance the legal protection of travellers by revising the existing provisions and—additionally—by regulating some new issues that were left outside the scope of the older directive. Reading between the lines, it becomes obvious that the (targeted) full harmonisation structure of the 2015 Package Travel Directive is based on the quest to maximize legal certainty for the involved stakeholders.[8]

A more explicit reference of full harmonisation to legal certainty can be found in the Timeshare Directive of 2009 (2009 Timeshare Directive), which—just like it is the case with the more recent Package Travel Directive—was the result of an attempt to replace the minimum harmonised consumer acquis with a fully harmonised regime. Recital 3 2009 Timeshare Directive explains this as follows: "In order *to enhance legal certainty* and fully achieve the benefits of the internal market for consumers and businesses, the relevant laws of the Member States need to be approximated further. Therefore, certain aspects of the marketing, sale and resale of timeshares … should be *fully harmonised*" (emphasis added).

In a similar vein was the Proposal for a Regulation on a Common European Sales Law (CESL Regulation Proposal). Its Article 1(2) read as follows: "This Regulation enables traders to rely on a common set of rules and use the same contract terms for all their cross-border transactions thereby reducing unnecessary costs while providing a high degree of legal certainty."

[8] See, in particular, Recital 2 of the 2015 Package Travel Directive.
The accompanying Explanatory Memorandum (CESL Explanatory Memorandum) added the following: "[A] Directive setting up *minimum standards* of a non-
optional European contract law would not be appropriate since it *would not achieve* the level of *legal certainty* and the necessary degree of uniformity to decrease the transaction costs" (European Commission, 2011: 10; emphasis added). With a focus on consumers the CESL Explanatory Memorandum further explained that consumers "would also enjoy more certainty about their rights when shopping cross-border on the basis of a single set of mandatory rules" (European Commission, 2011:4)

The most specific and comprehensive full harmonisation reference to legal certainty

might arguably be found in the 2011 Directive on Consumer Rights (CRD). Its Recital 7 reads as follows:

> Full harmonisation … should considerably increase legal certainty for both consumers and traders. Both consumers and traders should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level.

Even from a legal certainty perspective the value of full harmonisation of consumer law has, however, not remained undisputed. In legal academia and the Member States, in particular, opposition has grown over the years. Several commentators have been arguing that the Commission's harmonisation plans would actually decrease the level of legal certainty (at least in the Member States). Three references shall exemplify this.

The first two examples, comments by Stürner and Loos, date back to the debate on the CRD Proposal, which—in a fully harmonised way—covered a broad range of the consumer acquis. Stürner explains that the use of full harmonisation might cause the necessity to make some difficult and potentially far-reaching policy decisions at the domestic level, and warns of possible negative effects as a result of legal "friction" (*Friktion*) (Stürner, 2010: 20). According to Stürner domestic legislators would have to choose between prioritising legal stability / continuity or legal clarity / predictability. In either case legal certainty might be at risk. His main argument rests on the fact that the material scope of EU consumer law is usually narrower than its national counterparts, which often are applicable also to scenarios that are not covered by EU consumer law. In case of full harmonisation national lawmakers would have to opt for one of two solutions. One could either choose to implement EU law narrowly, i.e., limit its effect to those cases covered at the EU level. Other scenarios would still fall under the traditional national regime. If the national legislator opted for this solution, legal clarity (and predictability) might be impaired, because predicting the legal consequence in a concrete case would become more difficult. Various questions might arise, such as: Is the affected party a consumer or a business? If it is a consumer, is the case at hand covered by the implemented EU solution or still covered by the unaffected traditional solution at the national level? The other legislative choice would be to extend the applicability of the concept introduced at the EU level to cases that do not fall under the fully harmonised scope. This, however, would stand in contrast with the wish to strengthen the certainty notions of legal stability and continuity with respect to well established domestic rules.

Loos agrees with Stürner and explains that national legislators would have to identify and opt for the lesser of two evils. In Loos's words the critique is framed as follows: "The [national] legislator is not to be envied in making its choice [note: in the just outlined scenario], as both approaches bring clear disadvantages, will require extensive legislation and may bear unexpected consequences" (Loos, 2010: 70).

Shortly after the adoption of the CRD Grundmann reaffirmed the sceptical voices by focusing on Canaris and Bydlisnki's certainty notions of stability and continuity. He argued that attempts not to allow for domestic solutions that would surpass the EU standards, i.e., not following minimum harmonisation, would stand in clear contradiction to century-long national efforts to search for the best suitable solution for citizens. In Grundmann's words the concerns read as follows: "The more broadly the full harmonization mode is used, the more frustrated become the advantages that the national systems of law have achieved because of centuries of scholarship and practice—advantages in substantive justice and in legal certainty" (Grundmann, 2013: 126). Pursuant to this view, citizens who rely on their home Member States' protective regime would be met with disappointment if the domestic rules had to be abandoned as a consequence of fully harmonised standards.

With its 24 official languages the EU is a multilingual community—some authors use the term "plurilingual" (Jacobs, 2003). Paunio stresses the importance of this to live up to the European motto "united in diversity", arguing that "[m]ultilingualism constitutes one of the very cornerstones of the European project" (Paunio, forthcoming [2017]). However, multi-/plurilingualism presents further challenges for legal certainty in the EU—in principle regardless of the harmonisation level.

For the sake of stabilising and further enhancing the internal market, Member States and national stakeholders need to understand, apply and implement EU law uniformly (unless Member States are left legislative discretion). In this context several authors have pointed out that linguistic diversity might complicate the process and could put legal certainty at risk, because terms might be understood in different ways depending on the language used. In this respect translation and translators play a decisive role in securing a high level of consistency. Reaching a sufficiently high level of consistency can, however, be difficult. Paunio, for example, succinctly refers to the translation process as "[l]ost in translation" (Paunio, 2013: 5).

Cosmai takes a closer look at the implications of language from a legal certainty perspective. Referring to actual examples of terminology used in EU legislation, Cosmai explains that the risk of getting translations wrong is high as a consequence of linguistic nuances. He emphasizes the importance of EU guidelines to simplify the wording used in EU materials. The 2003 Joint Practical Guide [of the European Parliament, the Council and the Commission] for the drafting of legislation within the Community institutions (note: Now available in a 2013 version)[9], in particular, would deserve appreciation, as it calls for special care when using terminology and concepts that could be understood in different ways throughout the EU. To reduce the risk of misunderstandings and improper translations, the language used in original sources should be as simply and unambiguous as possible (Cosmai, 2014: 85–88). As an alternative (or ideally as a supplementary step) Baaij asks for a stronger involvement of legally trained translators. This, so Baaij, would further increase the consistency of legal translations (Baaij, 2015: 119).

But even the use of legally trained translators could not guarantee a perfect situation. One complicating factor in endeavours to safeguard legal certainty with the help of legal translation

is the fact that language is limited and linguistic differences exist. The linguistically most suitable expression might still have a narrower or broader meaning than in other languages or might represent a vaguer / more unambiguous legal concept. Concrete examples are given by a number of commentators. Sage-Fuller, Prinz zur Lippe and Ó Conaill, for example, use the phrase "obstacles to translatability" (Sage-Fuller et al., 2013: 506-509) and show with the help of just 3 out of 24 official languages—French, English and Irish—how difficult it is to find absolutely suitable legal translations. Authors including Kjaer (Kjaer, 2015), Felici (Felici, 2015), Strandvik (Strandvik, 2015) and Filipowski (Filipowski, 2014) provide for examples from additional languages. Against this background Van der Jeught confirms the view that linguistic diversity can create practical certainty / consistency problems (Van der Jeught, 2015: 131–132). Taking reference to the CJEU's decision in *Kerry Milk*[10] Van der Jeught explains that in addition to merely translating, comparisons of different language versions and eventually interpretation of potentially confusing expressions might be necessary to clarify a situation—a task that is time consuming and difficult to be achieved, likely also for legally trained translators. Overall, there is a thin line between satisfying the call for legal certainty by offering legal translations of EU law materials and causing legal uncertainty as a consequence of "inherent imperfections of legal translations" (Pozzo, 2016: 142).

Hence, despite its undeniable benefits, legal translation is not seldomly stretched to its limits (Conway, 2012: 149). This could eventually have an impact on the concrete legal treatment of situations in the Member States, as (even fully) harmonised provisions could be understood in different ways. Some civil procedure law authors use this argument to stress the importance of the CJEU in safeguarding legal certainty and enabling EU integration. Storskrubb, for example, emphasizes the importance of "creating a genuine judicial space" (Storskrubb, 2008: 67) to enable companies and citizens to engage in cross-border activities without the risk of falling subject to diverse legal treatment (that could also result from different legal translations). In this respect the CJEU plays a key role to clarify the meaning of ambiguous legal terminology and concepts and by doing so facilitates the consistent application of EU law in the Member States. Cloots is one of the authors who stress the CJEU's "supervisory and guidance function" (Cloots, 2015: 260). She explains that Member States might—(also) as a consequence of linguistic peculiarities—understand the parameters introduced at the EU level in different ways or implement EU law in a nuanced / unique way (that from a translation / linguistic perspective would still be acceptable). Like already Storskrubb, she points out that the CJEU undertakes to ensure that the terminology used by the EU legislator is understood in the same way throughout the EU. I will return to the language issue later in this paper.

[9] http://eur-lex.europa.eu/content/techleg/EN-legislative-drafting-guide.pdf.

[10] Case C-80/76, *North Kerry Milk Products Ltd. v Minister for Agriculture and Fisheries* (1977) ECLI:EU:C:1977:39.

5. A look at the ECLI-SE from a legal certainty perspective

5.1 Law databases and legal certainty in general

Likely compelled by the findings that harmonisation efforts had not fully succeeded to exploit the potential of cross-border trade, the Commission had to look for supplementary tools to improve legal certainty. Differences in national law were—despite stronger harmonisation—unavoidable. The CJEU and national courts have been playing important guiding roles, but finding case law has remained complex. An important result of the Commission's efforts was the introduction of the ECLI and the ECLI-SE. In particular with the latter one the Commission aimed to take the legal certainty discussion to the next level. This becomes obvious when one recalls the earlier mentioned calls for improved transparency of and accessibility to case law that both relate to the general certainty notions as defined by Canaris and Bydlinski.

The use of case law databases is a key example of how to improve legal certainty. It primarily addresses the earlier discussed certainty notions of legal predictability, clarity, accessibility and law enforcement. This becomes particularly obvious and important in an environment like the EU, where the market consists of a large number of jurisdictions, each with their own legal peculiarities and nuances. Without the possibility to access and compare domestic and foreign case law efficiently and time effective, even the most advanced legal certainty strategies (as discussed earlier) would have a significantly limited effect.

The importance of case law databases has been repeatedly emphasized by EU stakeholders—in particular from a legal certainty perspective. Two examples shall illustrate this. In the framework of the CESL Regulation Proposal the Commission repeatedly referred to case law databases in the context of legal certainty. In the CESL Explanatory Memorandum, for example, the Commission expressed the following view:

> In order *to enhance legal certainty* by making the case-law of the Court of Justice of the European Union and of national courts on the interpretation of the Common European Sales Law or any other provision of this Regulation accessible to the public, *the Commission should create a database comprising the final relevant decisions*. With a view to making that task possible, the Member States should ensure that such national judgments are quickly communicated to the Commission (European Commission 2011, recital 34; emphasis added).

Also in the CESL Explanatory Memorandum the Commission discussed the financial consequences of a possible CESL case law database and arrived at the conclusion that on a short- and mid-term basis significant costs might indeed arise. One would have to create a distinct interface and feed the instrument with decisions from a multitude of jurisdictions. Long-term, however, the costs should decrease and the investment could pay off, because stakeholders would become more and more familiar with the CESL and its provisions (European Commission,2011: 10-11). This in return would—so the Commission—boost the internal market, because contractual parties could rely on one common set of sales rules for cross-border sales (European Commission, 2011: 4).

The CESL Regulation Proposal itself contained a provision to facilitate the introduction of a CESL case law database in its Article 14 ("Communication of judgments applying this Regulation"). Its first paragraph asked the Member States to notify the Commission immediately about CESL decisions issued by domestic courts. Collecting court decisions centrally should—so Article 14(2) CESL Regulation Proposal—enable the Commission to install a publicly accessible database of national and supranational CESL judgments.

In its feedback to the CESL Regulation Proposal the Parliament's Legal Affairs Committee (JURI) reaffirmed the importance of a CESL case law database. Embedding this idea in a catalogue of "flanking measures", JURI referred to the Commission's plan and added that a possible interface should "be fully systematized and easily searchable" (European Parliament 2013, Article 186a[2]).

The JURI reference, in particular, highlights two general legal certainty aspects of a case law databases: First, case law databases should be centrally supervised and uniformly conceptualised. Second, databases should be user friendly in a sense that they are easy to use / browse. One could refer to these two features as "operationality." In addition to this, one could identify two supplementary challenges (which are of less technical nature): First, search results should actually (and not only theoretically) be useful ("usefulness"). Second, the database visibility must be secured ("visibility"). In the following I would like to take a look at the ECLI-SE from the perspective of legal certainty and will aim to answer the question whether all three parameters—operationality, usefulness and visibility—are sufficiently taken account of and reflected by the instrument (in its current format). The absence of a Member State obligation to use the ECLI for national judgments will be left aside in the analysis, but undeniably has a negative impact on the overall viability of the ECLI-SE.

5.2 The ECLI-SE from the viewpoint of legal certainty

5.2.1 Operationality

Facilitating the accessibility of foreign and supranational case law with the help of a centrally accessible database has the advantage of (possibly) enhancing legal certainty—more precisely primarily its predictability notion—without concerning itself with legal harmonisation. The operationality parameter refers to this issue of a more technical nature. Put into a question, one could ask how the relevant database is principally conceptualised.

In my outline of the ECLI-SE I showed that from an operationality perspective the ECLI-SE looks promising. Although the database is fed by individual stakeholders, two EU institutions—the Commission and the CJEU—act as monitoring and guiding regulators. The widely standardized ECLI (Note: Differences are—in a relatively narrow range—only permissible with respect to the court code and the ordinal number) should guarantee that the actual identification of ECLI case law is easily done. On top of that the multilingual search interface allows ECLI-SE end-users to access the database in their mother tongues—or at least in a language that the end-users would be capable of.

5.2.2 Usefulness

When it comes to the question of the actual usefulness of the ECLI-SE, language—in several ways—plays in important role. In particular two issues deserve a slightly closer look: Language in its literal meaning and language understood as (professional, i.e., legal) terminology. To understand the conclusions in this sub chapter better, one should briefly return to the phenomenon of multilingualism and the actual consequences of linguistic diversity. The EU treasures the languages spoken by its citizens. Various language projects aim to strengthen multilingualism, here understood as the ability to speak (or at least: understand) more than one's mother tongue. Most notably they include study and training programs ("Lifelong Learning Programs"), such as *Erasmus, Leonardo da Vinci* and *Comenius*.

Since 2001 the Commission has mandated four "Eurobarometer" studies (Eurobarometer language studies) to assess the interrelationship between the EU and its languages (European Commission, 2001; European Commission, 2005; European Commission, 2006; European Commission, 2012). Some of the results reveal some important data for the present analysis.

Questions covered by the most recent Eurobarometer language study, the 2012 Eurobarometer language study, addressed a number of key issues such as languages other than the mother tongue spoken in the EU; the level of spoken language ability in the EU; passive language skills in the EU; the frequency and situations of use of language in the EU; and the citizens' perspective on multilingualism in the EU and language translation. The answers to the questions related to (foreign) language skills and multilingualism, in particular, deserve a closer look.

The 2012 Eurobarometer language study showed that the ability to understand and speak foreign languages is widely believed as being advantageous and important throughout the EU. Almost all survey participants (98%) would encourage their children to study a foreign language (European Commission, 2012: 7). An overwhelming majority (88%) agreed that being capable of foreign languages would benefit also their own personal development (European Commission, 2012:7). A comparable majority of respondents (84%) expressed the opinion that every European citizen should be able to be capable of at least one foreign language (European Commission, 2012: 8).

Despite the common conviction that all official EU languages should enjoy equal treatment, most survey respondents (69%) believe that having one common European language would be of high value for the Europeanisation process (European Commission 2012, p. 9). In terms of ranking the official EU languages according to their perceived importance, English was by far the most often mentioned one (79%) (European Commission, 2012: 75). The runner-ups finished with a significantly lower score. French and German reached only 20% each and Spanish in fourth place 16 % (European Commission, 2012: 75). Multiple indications were possible, but all remaining languages reached only low one-digit percentage points.

The 2012 Eurobarometer language study further revealed data on the actual language skills of EU citizens. The results show great room for improvement. Only slightly more than half of the respondents (54%) answered that they could communicate in at least one foreign

language. The numbers for those who could speak at least two / three non-native languages were expectedly even much lower (25% and 10% respectively)—multiple indications were again possible (European Commission 2012, p. 12). This left 46% of the respondents with no foreign language skills. When asked which foreign language the study participants could either speak well enough to communicate, follow when used on the TV or radio or read a newspaper or book in, English was (again) the most popular answer with 38% (speaking) (European Commission, 2012: 19) and 25% (both with respect to listening and reading) (European Commission, 2012: 29 & 32) of those who were capable of at least one non-native language. Remarkably (but maybe not unexpectedly) no other language scored higher than 12% (speaking) (European Commission, 2012: 19) and 7% (listening and reading) (European Commission, 2012: 29 & 32) with non-native speakers. The study put the results also into a historical context and showed that multilingualism had, in general, not been on the rise over the years. English and Spanish were the only two notable exceptions that had shown a significant increase in the number of non-native users compared to the predecessor study of 2005 (European Commission, 2012: 142).

What should be concluded from this data for the ECLI-SE? Put differently: Could the language issue be of importance for the success of the ECLI-SE—and if yes: Why and how? All relevant language studies (incl the 2012 Eurobarometer language study) indicate that the number of people who understand at least one foreign language might be higher than in many other regions of the world. At the same time it would be an illusion to think that every EU citizen (or at least an overwhelming majority) is bi- or even multilingual.

What does this imply for the actual usefulness of the ECLI-SE? Multilingualism—if understood as linguistic diversity—exists in the EU. To date one can count 24 official languages and more than twice as many indigenous regional and minority languages (European Commission, 2012: 2). If one uses multilingualism, however, in a way to refer to being capable of foreign languages to make full use of the internal market (as a consequence of—from a linguistic perspective—enhanced cross-border transaction opportunities), then the picture is far from being perfect (or at least satisfactory). With the exception of English (which is understood by slightly more than half of the non-native English speakers in the EU) no other European language is commonly understood—let alone spoken—by non-native speakers in the EU.

With this fact in mind it should be helpful to stress that older EU(-wide) databases of any kind, e.g., CELEX, have traditionally been offering not only searches, but also search results in a variety of official EU languages. To facilitate the translators' jobs and further facilitate the general understandability of search results, the EU has also been providing a range of terminology databases. Furthermore, to enhance legal clarity and access to legislation, EU directives and regulations are usually published in all official languages. CJEU decisions can be accessed in a multitude of official languages as well, at the very least in English, but in many cases in all main or even all official languages. In his earlier mentioned analysis of the language impact on legal certainty Cosmai confirms that translations of EU materials are a significant certainty enhancement and adds some more examples, such as administrative acts (i.e.

materials other than EU legislation) and information materials (for businesses and EU citizens) (Cosmai,2014: 114–116).

In the case of the ECLI-SE the starting point for usefulness considerations is not much different. As shown further above, the database was introduced to improve the level of legal certainty in the EU and its Member States. The interface is clearly and simply designed and offers a wide range of search parameters—a fact that serves operationality requirements. The search results immediately reveal the languages that court decisions, abstracts and descriptions are available in.

However, when taking a closer look, one will realise that language questions pose arguably the biggest issue with the ECLI-SE. Member States are not required (thus far not even encouraged) to offer translations of their domestic case law, case abstracts and descriptions. The only explicit reference to multilingualism found in the ECLI Council conclusions refers to the translation of the name of the decision issuing court. § 4(2)(a)(iii) of the Annex of the ECLI Council conclusions asks for translations of the court names "in[to] all [official EU] languages, according to the multilingual thesaurus of names of organizations as set up to be used within the e-[J]ustice portal, and with hyperlinks to the descriptions of these courts as comprised on the e-Justice portal."

However, unlike it is the case with the names of the courts, the ECLI Council conclusions missed the chance to ask for the introduction of a truly multilingual database in a sense that the search results (and not only the names of the courts) could be accessed and read in a multitude of languages. When randomly looking at search results, one will see that in the vast majority of cases national case law is available only in the official language of the particular Member State. More than that, even the case abstracts and descriptions are in the vast majority of cases available only in the language of the source country. Unless the data comes from a Member State with English as the official language (which thus far is rather the exception), the published cases would not be understandable by the average ECLI-SE end-user. As explained above, no other language than English is spoken / understood by more than twelve percent of non-native speaking EU citizens. This in combination with the limited availability of results in the English language shows that only an insignificant percentage of possible ECLI-SE end-users would actually be able to read the court decisions, case abstracts and descriptions.

An additional linguistic fact complicates the situation. Results contain a high level of special (legal) terminology. With respect to the average non-legal professional ECLI-SE end-user it is justified to argue that in many cases legal concepts might be too complex and not commonly understandable—regardless of the end-user's language proficiency. Legal terminology databases and easily understandable case annotations are, however, not integrated into the ECLI-SE. From a legal certainty perspective this has to be regretted, because it would need a legally trained intermediary to clarify and interpret the legal implications of uploaded court decisions. Hence, consumers could (at best) benefit only indirectly from the ECLI-SE.

5.2.3 Visibility

The third parameter of the analysis concerns the visibility of the ECLI-SE or—from an end-user's perspective—the awareness of the existence of the search engine. Undeniably, the stakeholders' awareness is generally of prime importance for the viability of any instrument introduced at the EU level. I already dealt with this issue more extensively elsewhere (Wrbka, 2015: 269–270 & 298). In the context of the present analysis the key question is whether the ECLI-SE is visible enough to call it a successful tool.

Data with respect to the ECLI-SE itself is still pending, which might be best explained by the fact that the database was introduced only recently. In absence of pertinent data it might be helpful to take a look at awareness studies that focused on comparable instruments. One example is the European Judicial Network in civil and commercial matters (EJN-civil) launched in late 2002. Conceptualised primarily as a platform to facilitate the judicial cooperation between the Member States, the ECJ-civil introduced the European Judicial Atlas in civil matters (European Judicial Atlas) that contains information on procedural EU law. With the launch of the e-Justice portal (i.e. on the same platform that hosts the ECLI-SE), the European Judicial Atlas was integrated into said e-Justice portal.

In 2014 the Commission published an external evaluation of the EJN-civil activities (2014 EJN-civil report). One prominent question covered by the report was the overall visibility of the network. The 2014 EJN-civil report drew a worrisome picture. According to the national EJN-civil contact points, i.e., the national institutions that monitor EJN-civil activities at the domestic level, the general awareness of EJN-civil activities was insufficient. Even among the legal profession the contact points assessed the visibility at a low level—70% of representatives from the legal profession were said not to be aware of EJN-civil (European Commission, 2014: 84). The report arrived at the conclusion that "EJN-civil seems not to be known enough among the legal professions and the general public
… [and that] steps need to be taken to increase the visibility of the EJN-civil among the legal professionals and the general public" (European Commission, 2014: 56).

The 2014 EJN-civil report suggests the assumption that improving the visibility and raising awareness still remains one of the most urgent challenges to enhance the viability of instruments introduced at the EU level including the ECLI-SE. Data processed in my earlier mentioned commentary on the latter one supports this view. Even if one considered the (still low) awareness among the legal profession as somewhat satisfactory, awareness among non-legally trained / experiences stakeholders (from the business and consumer sides) would have to be called insufficient. Without strong efforts to change this situation the ECLI-SE might (at best) remain a tool exclusively to be used by the legal profession and legal academics.

6 Concluding remarks: And now?

The ECLI and the ECLI-SE were introduced to take legal certainty to the next level. Indeed, with the ECLI-SE the EU achieved something unique. For the first time ever, domestic and EU

case law can now be comprehensively accessed via one search portal. Thanks to the (largely) standardized case law identifier (ECLI), the ECLI-SE offers a promising instrument in terms of enhanced accessibility of case law. With every additionally contributing Member State this value will further rise.

However, the ECLI-SE (in its current format) shows some significant flaws. This paper pointed out the arguably two most striking drawbacks (in addition to the absence of a Member State obligation to use the ECLI)—the low awareness of potential ECLI-SE end-users and linguistic issues. Both mean a major impediment from a certainty perspective. With respect to the latter one, this paper showed that the vast majority of court decisions, case abstracts and descriptions uploaded to the ECLI-SE are available only in the source language. None of the actively contributing Member States have English—the only really widely understood language in the EU—as an official language. Hence, the understandability and usefulness of ECLI data is hampered. The absence of explanations of special (legal) terminology and the low general awareness of EU instruments further complicate the situation, in particular with respect to consumers, who—in principle—should be considered as layerpersons, both in terms of legal and linguistic knowledge. Likely positive effects for consumers would merely be of indirect nature, i.e., consumers would, in principle, only benefit from the ECLI-SE if competent, linguistically and legally experienced / trained third party stakeholders assisted them. Hence, from a legal certainty perspective the ECLI-SE fails to adequately satisfy some core expectations of the Commission. To take recourse to Canaris and Bydlinski's pluralistic certainty concepts, the ECLI-SE in its current state—primarily as a consequence of language and awareness issues—does neither significantly increase legal predictability nor the practicability of the application of law, its overall clarity or legal accessibility.

Awareness raising, the inclusion of a terminology database and translations could improve the situation. With respect to the latter one, one must, of course, note that translating case law comes at a price and is not problem-free in itself. Translations could—due to linguistic peculiarities—lead to ambiguous, imprecise results. At a more general level it should further be noted that DG Translation, the directorate general in charge of official translations at the EU level, is already now stretched to its limits, handling approximately two million pages per year in 2015 (European Commission, 2015: 3). Taking into consideration that already now the ECLI-SE comprises several million cases (not "just" pages), time, money and linguistic feasibility are big concerns (even if case translations were not centralised, but outsourced to the Member State level), in particular if one would expect the cases to be translated into all official EU languages—as is, e.g regularly the case with documents published in the Official Journal (OJ).

Yet, if one really intends to significantly enhance legal certainty with the help of the ECLI-SE, there is no way around translations (in addition to awareness raising and explaining legal terminology). Data about language abilities of EU citizens shows that

multilingualism—here defined as being capable of foreign languages—is still a big challenge in the EU. One notable exception is the English language, which is the only official EU language that a majority of non-native speakers in the EU understands. Ideally, data published in the ECLI-SE would be readable in all official EU languages. But this, as just explained, might remain wishful thinking. One (at least) temporary solution could be translating case abstracts and descriptions—if not the whole case—into English. These efforts would truly mean a significant step towards improved legal certainty.

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Wm. Dennis Huber*

Law, language, and corporatehood: corporations and the U.S. Constitution

Abstract: The discourse regarding the status and standing of corporations vis-à-vis the Constitution has consistently been misdirected by the Supreme Court. The issue that has caused so much consternation concerns whether a corporation is a "person."[1] The reason the discourse regarding the status and standing of corporations vis-à-vis the Constitution has been misdirected is the consequence of the very nature of the question: "is a corporation a person in the constitution?" The question preconditions the answer with the fundamental assumption that the discourse can take place using person-centered terms. To ask whether a corporation is a "person" in the Constitution places the cart before the horse. Before the question whether a corporation is a "person" in the Constitution is asked, the question "what is a person in the Constitution" must first be asked and answered. This paper asks the question that must be asked first, "what is a person in the Constitution," and answers the question using a critical linguistic analysis and exegesis of "person" in the Constitution as a whole and the canons of statutory and Constitutional interpretation adopted by the Supreme Court. While the Supreme Court has analyzed whether a corporation is a "person" in the Constitution, it has done so on a piecemeal basis. In cases in which the Supreme Court has ruled that a corporation is a "person" in the Constitution, it has disregarded, twisted, and distorted the basic rules of English grammar and syntax and its own canons of statutory and Constitutional interpretation. This paper recommends argues that the terms "corporate person" and "corporate personhood" be abandoned because they are, grammatically and syntactically, nonsense.

Keywords: legal translation, legal terminology, legal settings, walking on thin ice, the Constitution

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1 Introduction

Not unlike the illusionist's "lovely assistant" who misdirects the attention of the audience while the illusionist performs his magical acts, the discourse regarding the status and standing of corporations vis-à-vis the Constitution has consistently been misdirected by the Supreme Court.The issue that has caused so much consternation concerns whether a corporation is a "person." The solution of the Court is that a corporation is a "person," at least for parts of the Constitution. This solution, however, is the result of the failure of the Court to conduct a critical linguistic analysis and exegesis of the use of the term "person" in the Constitution as a whole.

[1] "Person" is set in quotes throughout this article to identify it as a specific term used in the Constitution and Supreme Court rulings in order to differentiate it from the word person which has a broader meaning in general language.

Various terms such as “fictitious person”and “artificial person” have been used by the Court to describe corporations with respect the status and standing of corporations vis-à-vis the Constitution. Yet, in spite of these person-centered terms, there has been a remarkable failure by the Supreme Court to establish what is a “person”in the Constitution as a whole.

The reason the discourse regarding the status and standing of corporations vis-à-vis the Constitution has been misdirected is the consequence of the very nature of the question. The question asked is, “is a corporation a person in the constitution?”Thequestion preconditions the answer with the fundamental assumption that the discourse can take place using person-centered terms. Because the Supreme Court has failed to conduct a critical linguistic analysis and exegesis of the use of the term “person” in the Constitution as a whole the discourse is misdirected.

To ask whether a corporation is a “person” in the Constitution places the cart before the horse. Before the question whether a corporation is a “person” in the Constitution is asked, the question “what is a person in the Constitution” must first be asked and answered. That question, and therefore the answer, has been consistently ignored by the Supreme Court.

This paperasks the question that must be asked first, “what is a person in the Constitution,” and answers the question using a critical linguistic analysis and exegesis of “person” in the Constitution as a whole, rather than piecemeal as the Supreme Court has done using the Supreme Court’s canons of construction and interpretation. With the first question answered, the question whether a corporation is a “person” in the Constitution has a context and is easily answered without resorting to the linguistic gymnastics and legal acrobatics that has been employed by the Supreme Court

Amazingly, the Supreme Court has ruled that a corporation is a “person”in the Constitution without first having conducted acritical linguistic analysis and exegesis of theuse of “person” in the Constitution as a whole.While the Supreme Court has analyzed whether a corporation is a “person” in the Constitution, it has done so on a piecemeal basis. That is, it has analyzed “person” inarticles and amendments in isolation but not ionthe Constitution as whole. In cases in which the Supreme Court has ruled that a corporation is a “person” in the Constitution, it has disregarded, twisted, and distorted the basic rules of English grammar and syntax. The terms and language used to frame the discourse of the status and standing of corporations in the Constitution are critically important because language determines how we construct the social world and its legal institutions and therefore what we believe about the status and standing of corporations in the Constitution.

The rest of this article is organized as follows. First, the method and limitations are explained. Second, the roleand importance of language in constitutional interpretation, including rules of grammar and syntax, the way language directs our view of the world and our discourse about corporations, and how language is used to construct reality, is examined. Third, the relationship of the Supreme Court, language, and the social construction of corporations is discussed. Here, the focus is on Supreme Court rulings where the Court has ruled that corporations are persons or citizens in the Constitution and the methods and language the Court uses to support its rulings. Fourth I present a case for abandoning the use of “corporate personhood” and adopt the term “corporatehood” in order to realign our thinking about what a corporation is, and what it is not. Conclusions follow.

2 Method and Limitations

This paper does not trace the historical development of theories of the corporation, corporate law, or Supreme Court rulings on the status and standing of corporations vis-à-vis the Constitution over time. The historical development of theories of the corporation, corporate law, or Supreme Court rulings on the status and standing of corporations vis-à-vis

the Constitutionover time is beyond the scope of this article.While various theories of corporations have been relied on by the Court over 160 years, the end result has always been the same—corporations are persons and citizens. They are different routes to the same destination so to speak. This paper, however, is concerned only with the result and how the Court twisted the basic rules of English grammar and syntax and ignored its own canons of construction and interpretation.

Furthermore, this paper is not concerned with whether corporations should, or should not have, constitutional rights. Its only focus is on the Supreme Court's social construction of corporations as persons. It thus is not concerned with the various theories of corporations or corporate personhood. It presents no philosophical arguments regarding the nature of corporations.

To achieve that purposeI applywhat can be considered as the parol evidence rule[2] to the Constitution andconduct a thorough textual analysis of the meaning of "person" in the Constitution. That is, rather than looking outside the Constitution to determine what "person" means in the Constitution, it treats the Constitution as the final, complete document and extrinsic sources are unnecessary to explain or determine what the term "person" means in the Constitutions.While there are many things in the Constitution that justify resorting to external evidence for their interpretation (what constitutes unreasonable searches and seizures in a technological age, for example), "person" is not one of them. The Constitution speaks for itself and the meaning of "person" is abundantly clear when the Constitution as a whole is examined.

Second, I conduct a critical linguistic analysis and exegesis of the Constitution as a whole with respect to how "person" is used in the Constitution. Exegesis, from the Greek meaning "to lead out," is "the process of drawing out the meaning from a text in accordance with the context…and tends to be objective,"[3]The linguistic analysis includes an examination of the grammar and syntax used in the articles and amendments.

Third, I adopt the Supreme Court's canons of statutory and constitutional construction and analysis.The Supreme Court's canons of statutory and constitutional construction are

> "the starting point for interpreting a statute is the language of the statute itself. Absent a *clearlyexpressed* legislative *intention to the contrary*, that *language must ordinarily be regarded as conclusive*." Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al., 447 U.S. 102, (1980) (emphasis added).

Twelve years later, the Court reiterated its principles.

> "[I]n interpreting a statute a court should always turn to one cardinal canon before all others . . .[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. (citations omitted)…when the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete." Connecticut Nat'l Bank v. Germain, 503 U.S. 249 (1992).

The same canon necessarily applies to interpreting the Constitution. That is, the starting point for interpreting the Constitution is the language of the Constitution itself. Absent a clearly expressed intention to the contrary, that language of the Constitution must be "regarded as conclusive." Furthermore, in interpreting the Constitution the cardinal canon is that the what Constitution says is what it means and,since the term "person" in the

[2] The parol evidence rule states "where the parties to a contract intended for their written agreement to be the full and final expression of their bargain (i.e., the writing is an integration), other written or oral agreements that were made prior to or simultaneous with the writing are inadmissible for the purpose of changing the terms of the original agreement" https://www.law.cornell.edu/wex/parol_evidence_rule (Last visited on ?).

[3]https://en.wikipedia.org/wiki/Exegesis (Last visited on ?).

Constitution is unambiguous, absent a clearly expressed legislative intention to the contrarythe inquiry is complete.

Fourth, I look for "textual clues" in the words surrounding "person." For example, in Samantar v Yousuf et al. 130 S.Ct. 2278 (2010) the Court analyzed the Foreign Sovereign Immunities Act of 1976 "as a whole" by searching for textual clues in the Act for the meaning of the term "person" as used in the Act. Based on the textual clues in the Act, the Court found that the Act did not include a person acting on behalf of a foreign state. In like manner, I search for textual clues by considering the words surrounding the term "person," but also how "person" is used elsewhere in the Constitution; i.e., in the Constitution as a whole.

Fifth, I use the Supreme Court's practice of taking the words in their ordinary meaning. For example, in Federal Communications Commission et al v. AT&T Inc., et al,, 562 U.S. ___(2011).the Supreme Court made a linguistic inquiry into the meaning of "person" in the Freedom of Information Act where the Court noted that, "When a statute does not define a term, we typically give the phrase its *ordinary meaning* [citation omitted, emphasis added]...The construction of statutory language often turns on context." The Court went on to acknowledge that its practice when interpreting a statute is that the "language should be construed 'in light of the terms surrounding it.'"

In its various rulings that "person" means not only natural persons but also corporations which it has labeled "fictitious" and "artificial," the Supreme Court abandoned these two fundamental principles of interpretation. Rather than employing the principles of exegesisto the Constitutional text, the Supreme Court has instead opted to engage in eisegesis.Eisegesis is the opposite of exegesis. Eisegesis is "the process of interpreting a text or portion of text in such a way that the process introduces one's own presuppositions, agendas, or biases into and onto the text. This is commonly referred to as reading into the text. Eisegesis is regarded as highly subjective."[4]

3 The Role and Importance of Language in Constitutional Interpretation

Language is probably the most powerful tool for shaping abstract thought and exerts a strong influence over how one thinks about abstract domains (Boroditsky, 2001)Language not only shapes our view of the world and what we (think we) know about it, it also strongly influences perceptions of identity.Goodrich (1986) does not find it not surprising that the legal profession has recently taken an interest in interpretation and the linguistic dimensions—language and text—of discourse on legal institutions. The dominant strategies of legal interpretation are exegesis and hermeneutics (Goodrich, 1986).Goodrich points out that "One of the most interesting developments within contemporary legal theory has been the increasing importance accorded to the concept of interpretation." Only recently have lawyers and the legal academy taken a serious interest in discourse and language according to Goodrich,

Therefore, a brief review of the relationship of language toculture and the social construction of reality will serve as a prelude to, and foundation for, understanding the relationship of language and "person" in the Constitution. This will include a brief review of basic rules of English grammar and syntax since grammar and syntax are "geared to the organization of the semantic fields"(Berger &Luckmann, 1966;Searle, 1995).Using the Supreme Court's canons of construction, I will then present a critical linguistic analysis and exegesis of how "person" and "citizen" are used in the Constitution and compare how "person" and "citizen are used in the Constitution with the Supreme Court's construction of

[4]https://en.wikipedia.org/wiki/Eisegesis.

corporations as persons and citizens to demonstrate that the Supreme Court's construction corporations as persons and citizens has not validity.

3.1 Language, Culture, and the Social Construction of Reality

Social reality has been described as"ontologically subjective in that the construction and continued existence of social constructs are contingent on social groups and their collective agreement, imposition, and acceptance of such construction." (Frankenberg, 1993).In the case of Supreme Court rulings, the Supreme Court's construction of corporations is, in essence, imposed by law rather than by collective agreement. That is,American society, and lawyers in particular, are required to accept the Supreme Court's construction of corporations.[5] In the words of Berger and Luckmann (1966), "what is known as human knowledge and human societies includes the processes by which any body of knowledge comes to be socially established as reality" (Berger &Luckmann, 1966). Here, however, the social process is also a legal process.

Searle (1995) contends that human language provides the foundation for institutional ontology (Searle, 1995).Human language, he argues,has the capacity not only to represent reality but also to create new reality by representing that reality as existing. For example, language creates institutional reality such asgovernment and corporations and represents that reality as existing (Searle, 1995).The representations which constitute institutional reality are essentially linguistic; i.e., language does not just describe, it creates (Searle, 1995).

Searle (1995) further describes institutional facts as legal concepts for which there is a connection to language; viz, there cannot be institutional facts without language. With a shared language institutional facts can be created at will (Searle, 1995). Institutional facts in turn create institutional, or social, reality.

A type of institutional fact that creates an institutional or social reality by "brute force"is the creation of a corporation (Searle, 1995).Creating such institutional facts out of brute force is seen by Searle as a "conjuring trick" or "sleight-of-hand" (Searle, 1995)A limited liability corporation, says Searle, is created out of thin air, so to speak, as no pre- existing object was operated on to transform it into a corporation. A corporation is created by fiat, by simple declaration (Searle, 1995), Moreover, the process of creating institutional facts often proceeds without the participants being conscious that they are creating a new social reality (Searle, 1995).

That the problem of the status and standing of corporations vis-à-vis the Constitution is both epistemological and ontological is well-recognized, as is the fact thattheir status and standing vis-à-vis the Constitution have been socially constructed. According to Mark (1987), the epistemological challenge of establishing corporations as personswas "enormous," the result of historical and abstract arguments attempting to reconcile the meaning of "person," "artificial," "natural," and "corporation."

However, it is not just the content of what is socially constructed and accepted as reality,but also the processes by which reality comes to be socially established as reality (Berger &Luckmann, 1966)."All socially meaningful definitions of reality must be objectivated by social processes" (Berger &Luckmann, 1966).But, as noted, the social process for constructing corporations as persons is also a legal process.

As Foucault (2010) states, the production of discourse in any society is "controlled, selected, organized and redistributed according to a certain number of procedures." Another way of looking at it is that "The limiting power of a discursive field is that it engenders or

[5] "This Constitution…shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby…" Constitution Article IV.

assumes consensus on particular ways of producing discourse" (Ezzamel, 2012).Constructing and (mis)directing the discourse of corporations as persons is controlled by the Supreme Court.

As pertains to corporations, the social processes and procedures that create and objectivatethe socially meaningful definition of corporations as personsis the legal process. The legal processlimits the power of the discursive field by not just assuming consensus on particular ways of producing discourse on corporations, but requiring acceptance in that the process culminates in Supreme Court rulings that corporations are persons.

Benjamin Whorf's Linguistic Relativity Hypothesissupports a causal relationship between language and consciousness (Clarke, Losoff, Dickenson McCracken, & Rood, 1984)."Language," says Whorf, "is inextricably intertwined with our perceptions of reality"and is a part of the matrix of presuppositions that determines our world view(Clarke, Losoff, Dickenson McCracken, & Rood, 1984).

Zlatev and Blomberg (2015) have shown that it is "clearly possible" that language affects thinking and note that "what Whorf …dubbed the principle of linguistic relativity appears to find a substantial degree of support in interdisciplinary research from the past two decades." They found in Whorf's (1956)principles of linguistic relativitythat there are particular aspects of language that will influence thinking, at least in particular domains.

Two such examples oflanguage as part of the matrix of presuppositions that determines our world vieware gender identity and race. The relationship of language to gender identity and race provide powerful examples of the capacity of language to influence and form our social reality which will then be used as a background for establishingthe way language influences and forms the social reality which comprises the status and standing of corporations vis-à-vis the Constitution.

3.2 Language, Gender Identity, Race, and Culture

> "I am whatever you say I am." Marshall Mathers

The discussion of the relationship of language to gender identity and race is not meant to suggest there is a relationship between gender identity and race and "person" in the Constitution. Rather, the purpose of this discussion is to illustrate the power of how language is used to construct the social reality of legal institutions.

Language and Gender Identity

Language is used to build up classification schemes in order to differentiate objects by gender among other things (Berger &Luckmann, 1966).Chew and Kelley (2007) observe that lawyers understand the power of language and "language can be a potent vehicle for subtle sexism." Furthermore, empirical evidence supports the proposition that language influences gender perceptionand can perpetuate gender stereotypes and status differences(Everett, 2013).

McConnell-Ginet (2011) also finds that attributes that make up particular characterizations such asheterosexual and woman "draw on reification's that emerge from and constitute conventional maps of social reality."This accords with Berger and Luckmann's (1966) proposition that, "language builds up semantic fields or zones of meeting that are linguistically circumscribed. Vocabulary, grammar and syntax are geared to the organization of the semantic fields. Language builds up classification schemes to differentiate objects by gender among other things."

At the same time,language can also be used as a constructive tool for redirecting perceptions and discourse (Chew &Kelley, 2007).For example, the belief that language not only has the power to form perceptions of gender but refraining from using gender-specific

language has the power to reframe perceptions of gender was recently demonstrated by the announcement by Princeton University that it will cease using gender-specific language(Li, 2016).

It is understood that "The most 'real' or actual aspect of language is that of discourse…which will be constrained by the grammatical and semantic norms of the particular language" (Zlatev&Blomberg, 2015; see also Foucault, 2010,and Ezzamel, 2012). Goodrich (2006) explains:

> Particularly in the case of the text and the discourse…the object and outcome of interpretation is the result of carefully regulated techniques and strategies of construction. The object of interpretation is most commonly circumscribed, unified and then given a meaning by means of one of several possible interpretative methodologies which will not only define what it is that has to be interpreted but will generally also legitimate or "authorize" the meaning produced. In terms of legal interpretation, the historically dominant strategies are those of exegesis and hermeneutics."

Goodrich adds that "the exegetical technique is still the strongest argument legitimizing (or authorizing) both text and interpretation."

Moreover, according to Stewart (1994), language"is the nexus, the actual and concrete expression of the language-culture-society relationship" and therefore discourse is the embodiment of both language and culture."Supreme Court opinions thus become "cultural texts" which are "a sub-group of texts that are constantly taken up and reproduced by a whole society (Assmann, 2006).Cultural texts are more than just texts as a linguistic unit (Assmann, 2006).Cultural texts refer to "every semantic unit [and] exert a binding energy on the community in a normative and a formative sense. Normative cultural texts codify the norms of behavior" (Assmann, 2006). There are few things more binding on society and behavior than Supreme Court rulings.

Berger and Luckmann (1966) are more emphatic.While institutions are socially constructedinstitutions, by the fact they exist theycontrol human conduct. They setup predefined patterns of conduct, and therefore discourse, which channels conduct one direction against many other possible directions (Berger &Luckmann, 1966). Thus, if conduct is controlled by socially constructed institutions such as corporations, discourse concerning those socially constructed institutions is likewise directed by the nature of the socially constructed institutions.

Language and Race

Kramsch(1998) argues that, as with gender, race is a social construction and thus a function of language.Frankenberg(1993) adds that, understandingrace as a social construct is vital to understanding the capacity race has to affect all other domains of society. As with any social construct, the existence of race depends on people collectively agreeing and accepting that race exists(Frankenberg, 1993).In like manner, understanding corporationsas persons is vital to understanding the capacity corporations have to affect all other domains of society.

Pertinent tothe analysis of the relationship between language and corporations and the inclusion of "person" in relation to corporations, is Frankenberg's astute observation that the very use of a term such as "race," directs the discourse. That is, race is an ontological marker which "underlies other cultural conceptualizations"(Frankenberg, 1993).The same principle applies to the ontological maker "person" with respect to corporations. That is, "person" underlies cultural conceptualizations of corporations and directs the discourse about corporations' status and standing vis-à-vis the Constitution.

Language and Interpretation

According to Benjamin Whorf, co-originator of the Sapir-Whorf Hypothesis (also known as the Linguistic Relativity Hypothesis), the "real-world," i.e., the world we perceive that has been socially constructed, is built on language (Whorf, 1956).Losoff, Dickenson McCracken, andRood(1984) explain that,"a basic assumption of phenomenology [is] that reality is individually and socially constructed, an artifact of our consciousness."

There are two forms of the Linguistic Relativity Hypothesis. The strong form, which posits that language determines how and what we think, is no longer accepted (Kramsch, 1998).Language can guide and contribute to our world view, but it does not predetermine it.However, the weak form is supported by empirical findings and is today generally accepted and suggests that there are cultural differences in semantic associations of common concepts(Kramsch, 1998).

In the English language, thesemantic associations of common concepts of "person" and corporation has been embedded within the American culture (Mark, 1987).Language is bound up with culture in multiple and complex ways (Assmann, 2006). The use of particular language is a factor in American cultural and legal institutions not only with respect to race and gender, but also with "person" and corporation. The result is that "personhood…is unquestionably central to American legal culture" (Fagundes, 2011).

Grammar and Syntax. Grammar is a part of linguistics that includesthe structural rules that govern the composition of clauses, phrases, and words (Grammar, 2016).Syntax is the part of linguistics that deals withthe basic rules of a language, i.e., the arrangement of words and phrases to create well-formed sentences in a language (Oxford Dictionaries, 2016).Grammar is related to syntax in that both dictate how words combine to form meaningful phrases and sentences.

In English, the rules of grammar and syntax are that the adjective is placed before the noun. In English, "person" and "personhood" are nouns. Words such as "natural," "fictitious," and "corporate" are adjectives.For example, in the term "natural born Citizens" [6] in the Constitution the adjective "natural born" modifies the noun citizen to distinguish natural born citizensfrom foreign born citizens who have been naturalized according to the naturalization process enacted by Congress pursuant to Article I, Section 8 (See Appendix B).Combining "fictitious" or "artificial" with "person" results in "fictitious person"or "artificial person" where, like "natural born," the adjective "fictitious" or "artificial" modifiesthe noun "person."

"Corporate" is an adjective. In the term "corporate person" "corporate" necessarily modifies "person" as required by the rules of English grammar and syntax, just as in the term "fictitious person" the adjective "fictitious" modifiesthe noun "person" and "natural born" describes the noun "citizen."But by adopting the term "corporate person" the Supreme Court has contorted the basic rules of English grammar and syntax and inverted the relation of adjective and noun. That is,in adopting the term "corporate person" the noun "person" is used to modify the adjective "corporate." By using the term "corporate person" the Court has transformed and socially constructed corporations into persons.

To extend Bourdieu's (1993) concept of symbolic violence which, while much more complex, basically holds that symbolic violence is committed by the establishment of a canon, a universally valued cultural inheritance established in order to guarantee the continued reproduction of its legitimacy by those with power to do so. As a Supreme Court

[6] "No Person except a *natural born Citizen*…shall be eligible to the Office of President." U.S. Constitution, Article II, Section 1, emphasis added).

ruling, the acceptance of the canon is required by the Constitution.[7] It can thus be said that the Supreme Court has on numerous occasions committed "syntactical and grammatical violence."The language the Court has used to establish a corporation as a "person," and the terms it has used in its pseudo-analysis of the Constitution and its use of "person" to justify its conclusion, is so beyond the semantic field of legal interpretation and standard rules of English that one is hard pressed to find a more accurate description than "syntactical and grammatical violence."

Seen from another perspective the term "corporate person" presents a dilemma. The dilemma is that either "corporate" is merely an adjective modifying the noun"person" (like "company man"), which does nothing to address the issue of the status and standing of corporations vis-à-vis the Constitution; or, "person"modifies "corporate" which transforms corporations into persons as the Supreme Court intends, but is a corruption of the English language.

Personhood is defined as, "The quality or condition of being an individual person" (Personhood, 2016). The Supreme Court has also coined the term "corporate personhood"where, like "person,"the noun "personhood" must modify the adjective "corporate"in order to transform corporations into persons. Else, like "corporate person," if corporate modifies "personhood," we are left with merely the adjective "corporate" modifying the noun "personhood" which again does nothing to answer the question "is a corporation a person?" Thus,the term "corporate personhood," like "corporate person" corrupts the basic rules of English grammar and syntax when used to transform corporations into persons,

Exegesis. Exegesis is the critical explanation or interpretation of a text (Merriam-Webster, 2016).Exegesis is a rigorous form of textual analysis (Goodrich, 1986).Its application to legal analysis is well accepted. It has "encompassed the entirety of practical legal method [and] is still the strongest argument legitimizing (or authorizing) both text and interpretation"Goodrich, 1986).

In spite of its power, however, the Supreme Court has never engaged in the exegesis of "person" in the Constitution as a whole, although it has, on occasion, embarked on the exegetical analysis of certain amendments of the Constitution. (As discussed in the following section, there are cases that arose under articles, but most involved amendments.)

Hermeneutics. Hermeneutics is the methodology of interpretation of texts and the process of text interpretation is at the center of hermeneutics (Hermeneutics, 2016).The theory of hermeneutics involves "complex cognitive process."While a critical discussion of the theory of hermeneutics is beyond the scope of this article, a brief discussion is necessary.

Hermeneutics postulates that there is nothing beyond understanding a text other than understanding the sentences which compose the text, and there is nothing beyond understanding other than understanding the words which compose the sentences (Hermeneutics, 2016).The meaning of a complex textual expression is therefore determined by its structure and the meanings of its words and sentences (Hermeneutics, 2016).Words only have meaning within complete sentences.

Applying the principles of hermeneutics to the Constitution and its use of "person," i.e., the meaning of a textual expression is determined by the structure and meaning of its words and sentences, "person" must be understood exactly as and limited only to how the Constitution uses it—a natural person.Extrinsic evidence is not necessary.

A. Summary

[7] In this context, "canon" does not refer to the canon of construction and interpretation, but of corporations as persons.

The purpose of the prior analysis concerning language and gender, language and race, language and culture, and language and interpretation was to demonstrate the power and importance of language in creating perceptions of reality. Language is used to construct our beliefs. It shapes our view of the world and directs our discourse about it. In like manner, the language used to describe corporations will controlwhat we think about corporations and direct the discourse about corporations.Because of the role corporations have in law, economics, and society,[8] the social construction of the status and standing of corporations vis-à-vis the Constitution is certainly as important as the social construction of gender and race.

With an understanding of the role and importance of language in forming our view of the world we can now turn our attention to how language is used in the Constitution to describe "person." This section presents a criticallinguistic analysis, including grammar and syntax, and exegesis of the Articles, Bill of Rights, and subsequent Amendments. The Articles and Amendments will be examined exhaustively *in seriatim* in order to provide the complete understanding of the meaning of "person" in the Constitution. This is necessary not only because the Supreme Court has neglected conducting acritical linguistic analysis and exegesis of "person" in the Constitution as a whole, but also because the Court has seen fit to interpret "person" in isolation; i.e., in individual amendments according to what it considered the purpose of the amendment, rather than in the Constitution as a whole and the purpose of the Constitution as a whole which is to protect the unalienable rights of the persons identified in the Declaration of Independence and the Constitution—natural persons. Interpreting "person" on an amendment-by amendment basis has led to anomalous results.

4 The Constitution – Person and Citizen

Who is a "person" in the Constitution?The Supreme Court knows how to conduct a linguistic analysis and exegesis and one may wonder why it has refrained from such an undertakingall these years with respect to "person" in the Constitution as a whole. Nevertheless, I begin my analysis with the Supreme Court's canons of statutory construction and apply them to constitutional construction: (1) the starting point for interpreting the Constitution is the language of the Constitution itself, (2) absent a clearly expressed intention to the contrary, that language must ordinarily be regarded as conclusive; and (3) the use and meaning of the term "person" in the Constitution will be examined with the surrounding words in the Constitution "as a whole" Textual clues such as those the Supreme Court searches for will be discerned along the way.

Gerber (1996) sees the Constitution as a logical extension of the Declaration of Independence. The unalienable rights embodied in the Declaration are at the heart of the Constitution(Gerber, 1996).Since the rights and protections grantedby the Constitution, and the rights and protections to whom they are granted(persons and states)are grounded in the Declaration of Independence(Gerber, 1996),it is necessary to present here the relevant portionsof the Declaration of Independencein their entirety:

> "When, in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation…

[8] "Corporations help structure and facilitate the activities of human beings." Justice STEVENS, Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010), concurring in part and dissenting in part.

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.… that these united colonies are, and of right ought to be free and independent states…
>
> . . . .
> We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world…"

The first thing to notice is that "people," "men," and the "governed" from whose consent governments derive their just powers are, and can only be, natural persons. Although not numerous, corporations existed in the coloniesat the time of the Declaration of Independence but it is only natural personswho can dissolve political bonds with one another. [9] Only natural persons can consent to be governed. Only natural personscan be considered to be "endowed by their Creator;" i.e., "the Supreme Judge of the world."Corporations are not created by the Supreme Judge of the world. The Supreme Judge of the worlddoes not endow corporations or any other organizational form with unalienable rights. Only natural personshave a right to "life, liberty and the pursuit of happiness" according to the Declaration of Independence.That is, by the parameters established by the Declaration of Independence, it is self-evident that men, and only men, are endowed by their Creator with the unalienable right to life;only men are endowed by their Creator, the Supreme Judge of the world, with the unalienable right to liberty; and only men are endowed by their Creator with the unalienable right to the pursuit of happiness. Corporations have can have no life, no liberty, and certainly no happiness.

"Person" is not explicitly defined in the Constitution.But we can conclude with certainty that the framers of the Constitution did not consider that either "person" or "people" needed to be defined in the Constitution.Otherwise, they obviously would have done so as they did with Representative and Senator, for example.

They likewise expected that everyone who read the Constitution would know what "person" meant. After all, they meticulously described the apportionment of Representatives and taxes based on "the Number of Free Persons" and three-fifths of non-free ("all other") personswithout having to resort to explaining free vs. non-free persons. Everyone simply knew, had to know, what "person" meant,whether free or non-free, since voting and taxation were a function of what constituted a "person," whether free or non-free.

It has been suggested that since the Framers knew about corporations, they intended the First Amendment to apply to corporations as well as individuals. But to so conclude requires going outside the Constitution. However, by appealing to extrinsic evidence, an opposite and equally compelling argument can be made that they knew about corporations and did *not* intend the Constitution to apply to corporations.

According to Berle's, (1928) historical analysis corporations were feared because corporations were taintedwith royal power and therefore smacked of government tyranny. Using extrinsic evidence it is just as logical, therefore, to interpret the absence of any reference in the Constitution to corporations to mean that the drafters intended to exclude corporations from the rights and protections of the Constitution in order to limit their power.

Furthermore, one of the canons of construction is to take the words in their ordinary meaning and to use the textual clues of the surrounding words.We can ask, therefore, what is the ordinary meaning of "people" as ascertained by the words surrounding "people" in the

[9] It is understood that the use of the term "men" does not mean "males," but is the old English in which "men" meant "humankind." This usage found its way into 1 U.S. Code § 1: "words importing the masculine gender include the feminine as well."

Declaration of Independence? The answer is obvious. What is the ordinary meaning of "person" as ascertained by the words surrounding "person" in the Constitution? That is equally obvious.

The parol evidence rule treats the Constitution as a completed document. Considering the Constitution as complete, applying the parol evidence and the canons of construction, the principles of exegesis and hermeneutics, and engaging in a critical linguistic analysis, the meaning of "person" in the Constitution is as clear as it is undeniable. Extrinsic evidence is unnecessary to determine the meaning of "person" in the Constitution as a whole.

The Supreme Court has determined that corporations are persons for certain constitutional purposes but not for others. But that conclusion was reached not by an exegesis of the Constitution as a whole, but by cherry-picking certain amendments and determining that corporations are "persons" based solely on what the Court interpreted as the purpose of the amendment (Mayer, 1990; Robinson, 2016),ignoring the plain language of the Constitution that the purposes of the amendments were targeted to natural persons as demonstrated in the following sections and to protect the unalienable rights of those who declared their . As will be seen, such an interpretation of corporations as "persons" is inconsistent with the meaning of "person" in the Constitution as a whole.

Article I – Legislative Branch

Article I deals with the legislative branch which defines the eligibility, election, terms, and powers of Representatives and Senators.

"Person"[10] and its derivativesis mentioned two times in Article I, Section 2. Only a person who is 25 years old and a citizen of the United States is allowed to be a Representative.

In Article I, Section II, "Person" obviously means only natural persons, i.e., only a natural person can be a Representative. "Three-fifths of all other persons" also necessarily refers only to natural persons since "other persons" refers to non-free persons; i.e., those in involuntary servitude (slaves).

"Person" and its derivatives are mentioned two times in Article I, Section 3. "No *Person* shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizens of the United States." As with Section 2, "person" here refers to a natural person. Only a natural person can be a Senator.

"Person" and its derivatives are mentioned two times in Article I, Section 6,which outlines term limitations of Senators or Representatives.

"Persons,"[11] plural, is referred to in Section 7 where "the Names of the Persons voting for and against the Bill shall be entered on the Journal." Persons, as referring to Representatives and Senators, are natural persons.(It is interesting to note that while both "people" and "persons" are the plural of "person," and the Supreme Court has ruled that a corporation is a "person," it has never referred to a group of corporations as either "persons" or "people.")

"Person" and its plural, "persons" are mentioned three times in Article I, Section 9. "The Migration or Importation of such *Persons* as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress... Tax or duty may be imposed on such Importation, not exceeding ten dollars for each *Person*"The migration (voluntary) or

[10] "Person" and its derivatives are italicized in the quoted sections of the Constitution here and in the following sections for emphasis.

[11] Both "persons" and "people" are the plural of "person," the distinction being "people" refers to an unspecified a group while "persons," is used in a more official or formal contexts and refers to unspecified individuals in a group. See https://en.oxforddictionaries.com/definition/person (Last visited on: ?).

importation (involuntary, i.e., slaves) of "such *Persons*" and the tax on each "person"refer only to natural personsalthough slaves are counted as only three-fifths of a person for apportionment purposes. Titles of nobility obviously refer only to natural persons.

There can be no debate that every time the word "person" is used in Article I it is limited to a natural person. The context, the ordinary meaning of the term "person," and the textual clues all point to only one interpretation. They permit no other interpretation. All references in Article I refer only to natural persons.

Article II – Executive Branch

In Article II, Section 1, which defines the eligibility, election, terms, and powers of the President, "person" or "persons" is usedten times. All such references are to natural persons.In particular, in the fifth paragraph "natural born Citizen" is emphasized in order to differentiate a "natural born Citizen" frommere "Citizen" which is aforeign born naturalized citizen under Article II, Section 1. As with Article I, there is no doubt that every time the word "person" is used in Article II, it is limited to a natural person.

Once more, there can be no debate that every time the word "person" is used in Article II it is limited to a natural person. The context, the ordinary meaning of the term "person," and the textual clues all point to only one interpretation. They permit no other interpretation. All references in Article II refer only to natural persons.

Article III – Judicial Branch

Article III governs the Supreme Court and lower courts. Judges, of course, refers to natural persons. "Person" is mentioned twice in reference to treason, thus obviously a natural person since only a natural person can commit treason.

In Section III, Article III, a "person" may not be convicted of treason unless on the Testimony of two Witnesses and no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted. Only a natural person may commit treason.

Yet again, there can be no debate that every time the word "person" is used in Article II it is limited to a natural person. The context, the ordinary meaning of the term "person," and the textual clues all point to only one interpretation. They permit no other interpretation. All references in Article II refer only to natural persons.

Article IV – States

Article IV deals with persons charged with crimes who flee to another state and their extradition, and the return of escaped slaves to their owners. "Person" here can only meannatural person since only a natural person, whether natural born, nationalized, or involuntarily imported (slave) can be extradited or returned to his owner.Without controversy, only a natural person, or in the case of slaves, three-fifths of a person, is the subject of Article IV.The context, the ordinary meaning of the term "person," and the textual clues all point to only one interpretation. They permit no other interpretation. All references in Article II refer only to natural persons.

Bill of Rights and Subsequent Amendments

The Amendments are analyzed in numerical.

First Amendment. The First Amendment is the foundation of American democracy. The First Amendment states simply that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Except for the clause "theright of the people peaceably to assemble," "person" is not explicitly mentioned. But strangely, while the First Amendment has been litigated multiple dozens of times, and as discussed below the Supreme Court has ruled that the First Amendment applies to corporations as persons, the First Amendment itself does not contribute to the understanding of "person" in the Constitution other than the "people" whose rights peacefully to assemble are necessarily the same "people" as in the Declaration of Independence and the Preamble, and therefore refer only to natural persons.

Second Amendment. The Second Amendment states in relevant part, "the right of the *people* to keep and bear Arms, shall not be infringed." "People" as plural of "person" refers only to natural persons."People" here cannot include corporations since only natural persons can bear arms. Furthermore, neither corporations nor any other organization, can be part of a militia thereby further limiting the term "people" to natural persons."People" in Second Amendment are necessarily the same "people" as in the Declaration of Independence and the Preamble.

Fourth Amendment.[12]The Fourth Amendmentstates, "The right of the *people* to be secure in their *persons*…shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the *persons* or things to be seized."

Since the Fourth Amendment begins with the plural of person ("the right of the *people*"), "People" is the antecedent of the "*Persons*" who have a right to be secure. Therefore "persons" defines "people."The grammar and syntax, textual clues, and ordinary meaning of "person" and 'people"in the Fourth Amendment is such that the set of the domain of"the *people*" contains only natural persons.

Fifth Amendment. The Fifth Amendment states, "No *person* shall be held to answer for a capital…crime… nor shall any *person* be subject for the same offence to be twice put in jeopardy of life or limb…nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.The antecedent of "who shall not be deprived of life, liberty or property" is "person."

Only a natural person can commit a capital crime. Furthermore, the grammar and syntax support no other interpretation.If nonatural person shall be deprived of life, and no natural person shall be deprived of liberty, the textual clues require thatno natural person shall be deprived of property without due process of law.The set of (life, liberty or property) belongs to the domain of the same "person" who not shall be held to answer for a capital crime except on indictment which must not only be logically, but also grammatically and syntactically, in the same domain as the"person" who shall not be subject for the same offence to be twice put in jeopardy of life or limb; i.e., natural person.

The words surrounding "property" are "no natural person shall be deprived of life," and "no natural person shall be deprived of liberty."Therefore, no natural person shall be deprived of property.

Sixth Amendment. Amendment VI deals with trials and the rights of those accused of crimes. Neither "person" nor "citizen" is used. However, the personal pronouns "him" and "his" are used thereby, according to the rules of grammar, the application of the Sixth

[12] Amendment III prohibits the quartering of soldiers and is not relevant to the issue of persons in the Constitution.

Amendment is limited to those to whom the pronoun and possessive pronoun apply—natural persons.

Seventh Amendment. Amendment VII, as an extension of Amendment VI,also deals with trials, albeit civil trials. Again, neither "person" nor "citizen" is used but here no personal pronouns are used either.However, as an extension of trials, the parties in Amendment VII must be the same as those in Amendment VI – natural persons.

Eighth Amendment, Amendment VIII prohibits excessive bail or fines, or the imposition of cruel and unusual punishments. Based on the grammar and syntax used ("bail" and "cruel or unusual punishment")– Amendment VIIIcan only be applied to natural persons.Sincethe words surrounding "fines" are "bail" and "cruel and unusual punishments" which apply only to natural persons, the implications is clear that fines likewise apply only to natural persons.

Ninth Amendment. The language of Amendment IX is highly enlightening. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others [i.e., other rights] retained by the *people*." As previously noted, "people" is the plural of natural persons and is the same as "people" in the Preamble, Articles, and Amendments and therefore necessarily refers to the plural of natural persons.

Tenth Amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."The "people" is the plural of natural person. Regardless whether they have rights, corporations certainly have no power. Corporations, therefore, are excluded from the power reserved to the people. Therefore, "the people" are natural persons andthe same people as in the Preamble, Articles, and Amendments referred to in Article IX.

Eleventh Amendment. Amendment XI limits the power of the federal judiciary. Amendment XI prohibits the exercise of the federal judiciary in cases involving citizens of one state suing another state in federal courts. This amendment was adopted following the much criticized ruling in Chisholm v. Georgia, 2 U.S. 419 (1793)[13]that allowed individual, private citizens (natural persons) of one state to sue another state in federal court pursuant to Article III, Section 2. The citizens of the Eleventh Amendment and the citizens of Article III, Section 2 are therefore one and the same citizen—natural persons.

Twelfth Amendment. Amendment XII controls the electors for President and Vice-President. "Person" is referred to ten times. Since the Amendment deals with elections, all references to "persons"are to natural persons.

Thirteenth Amendment. The Thirteenth Amendment abolished slavery and involuntary servitude, neither of which is defined in the Constitution but both of which, like person, were understood, without the necessity of defining it, according to the ordinary meanings of those words. Slavery and involuntary servitude, of course, refer only to natural persons and relate back to Article I Sections 2 and 9.

Fourteenth Amendment. The Fourteenth Amendment necessarily refers back to and is framed by the Thirteenth Amendment which ended slavery and involuntary servitude. But were slaves, and those who were involuntarily imported, citizens just because the Thirteenth Amendment ended slavery and involuntary servitude? No. They were not even persons. They were only three-fifths of a person. Enter the Fourteenth Amendment.

The most important amendment for the critical linguistic analysis and exegesis of "person" in the Constitution as a whole is the Fourteenth Amendment. "Citizen" is referred to five times in two sections. It has one overall purpose—to make citizens out of non-citizens (slaves) by creating a person out of three-fifths of a person (slaves) consistent with the

[13] Even in this early case, the Court stated, "The ordinary rules for construction will easily decide whether those words are to be understood in that limited sense."

singular purpose of the Constitution—to secure the unalienable Rights of Life, Liberty and the pursuit of Happiness endowed by the Creator, the Supreme Judge of the world, to all natural persons who are created equal: "All *personsborn* or *naturalized* in the United States*are citizens* of the United States and of the State wherein they reside."Not only did the Thirteenth Amendmentprohibit slavery but, three years after the adoption of the Thirteenth Amendment,those who had previously been involuntarily imported,and descendants of the involuntarily imported,were now no longer three-fifths of a person and no longer non-citizens.They were persons and citizens.

The Fourteenth Amendment is the most important for an understanding of "person" for three reasons. The first reason is thatit is a clear and explicit definition of citizen: "All persons born or naturalized in the United States…are citizens."

As a result of the definition, the second, equally important reason for understanding "person" and citizen in the Constitution as a whole is that this is at once the creation of a "person" out of three-fifths of a person and therefore also the definition of "person" as explained below.

First, it is a mathematical identity: A is B and therefore B is A.[14]If all persons*born*in the United States or *naturalized* in the United States are citizens, then the converse must necessarily also be true. A personwho is either *born*in the United States or foreign-born and *nationalized* in the United States, is a citizen. Furthermore, a citizen,as a person who is either born in the United States or foreign-bornand nationalized in the United States, is limited to those who are actually born, i.e., natural persons.

Neither the Congress, nor the President, nor the Supreme Court can create a natural born person.[15] But Congress, and only Congress, can create a citizen through the formal naturalization process delegated to it exclusivelypursuant to and required by Article I Section 8.

Slavery and involuntarily servitude was so institutionalized in the American legal and constitutional system that only a Constitutional amendment could resolve the condition in which slaves were placed by the Constitution. That is, Congress could not create a naturalization process for the involuntarily imported because the Constitution already designated them three-fifths of a person and non-citizens.

The second reason the Fourteenth Amendment is important for the definition of "person" is that it is exclusive. Since "All persons born or naturalized in the United States…are citizens," the Fourteenth Amendment explicitly excluded from citizenship by the Fourteenth Amendment are all persons who are neither born in the United States nor foreign born and nationalized in the United States (tourists, for example). Only natural persons can either be born in the United States or be foreign-born and nationalized in the United States The grammar and syntaxadmits no other interpretation.

The third reason the Fourteenth Amendment is important for understanding "person" in the Constitution as a whole is that it defines "person" for the entire Constitution. The Fourteenth Amendment clarifies the meaning of person beyond doubt, a principle of interpretation that was corroborated by the Supreme Court itself more than 20 years prior to the adoption of the Fourteenth Amendment..

In United States v. Freeman, 44 U.S. 556 (1845)the Supreme Court stated, with respect to statutory interpretation, that

> "The correct rule of interpretation is that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing anyone of them, and it is an established rule of law that all acts

[14] As a mathematical expression it can be written as A ≡ B, therefore B ≡ A. An example is Theodor Geisel is Dr. Seuss, therefore Dr. Seuss is Theodor Geisel.

[15] Well, they can, but…. [Note to reviewers, this is supposed to be humorous]

> *in parimateria* are to be taken together, as if they were one law…If a thing contained in a subsequent statute be within the reason of a former statute, It shall be taken to be within the meaning of that statute…and if it can be gathered from a subsequent statute *in parimateria*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute…"

It is untenable and unacceptable to limit the principle of *in parimateria* only to statutes and not to the Constitution and constitutional amendments. If it can be gathered from a subsequent amendment what meaning is attached to the words of a former amendment or article, that amounts to a declaration of its meaning. Therefore, applying *in parimateria*to constitutional amendments and its use of "person" and citizenall former references to "person" and citizen must be interpreted in conformity with the Fourteenth Amendment. If "person" in the Fourteenth Amendment means natural person, then the "correct rule of interpretation" requires, according to the Supreme Court,that "person" is defined as natural person in all amendments and the entire constitution.

The Fourteenth Amendment, also known as the Due Process and Equal Protection Amendment, prohibits any state, present or to later be admitted to the Union of states, from depriving any person of life, liberty, or property without due process of law or denying to any person within its jurisdiction the equal protection of the laws. The syntax of the language lends itself to only one logical interpretation, which is: "No State shall make or enforce any law which shall abridge the privileges or immunities of persons born or naturalized in the United States,""States shall not deprive any person born or naturalized in the United States of (life, liberty, or property)." and "States shall notdeny to any person within its jurisdiction the equal protection of the laws." The set of (life, liberty, or property) belong to the same domain of "persons" whoare born or naturalized in the United States; i.e., natural persons.

The textual clues are unmistakable, and unavoidable. The textual clues support no other interpretation. "Person" in the Constitution means natural person and only natural person.

Fifteenth Amendment. The Fifteenth Amendment extends additional rights to citizens; i.e., to all persons born or all personsnaturalized in the United States. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." We again ask, who are the citizens whose rights to vote shall not be denied or abridged? Those citizens are the same citizens created by the Constitution and later by the Thirteenth and Fourteenth Amendments; i.e., those who were born or naturalized in the United States—natural persons.

Since it is the right to vote that is addressed, it is obvious that "citizen" refers to natural persons. Furthermore, only natural persons can have a race, a color, or a previous condition of servitude which condition was prohibited by the Thirteenth Amendment.

Sixteenth Amendment. The Sixteenth Amendment gives power to Congress to "lay and collect taxes on incomes" and is not relevant to the issue of "person" in the Constitution

Seventeenth Amendment. Amendment XVII addresses the composition of and vacancies in the Senate and is not relevant to the issue of "person" in the Constitution.

Eighteenth Amendment. Amendment XVIII deals with the enactment of the Prohibitionand is not relevant to the issue of "person" in the Constitution.

Nineteenth Amendment. Similar to the Thirteenth and Fourteenth Amendments, the Nineteenth Amendment extends the right to vote to certain persons born or naturalized in the United States; i.e., to citizens.

Unless expressly prohibited by the Constitution, states retain the right to determine which of their citizens have, or do not have, the right to vote. For example, prior to the Nineteenth Amendment, women were not allowed to vote in some states. With the Nineteenth Amendment. the right of citizens to vote is now extended explicitly to women,which are, of course, natural persons.

Twentieth Amendment. Amendment XX deals with the terms of president and vice-president and is not relevant to the issue of "person" in the Constitution.

Twenty-first Amendment. The Twenty-first Amendment repeals the Prohibition and is not is not relevant to the issue of "person" in the Constitution.

Twenty-second Amendment. Amendment XXII limits the terms of the President. While not specifying "natural born person," Amendment XXII does reference "person," which, as applied to the President, of course means not only "natural person" but"natural born person"and not naturalized person.

Twenty-third Amendment. Amendment XXIII deals with the District of Columbia and its representatives in Congress and is not is not relevant to the issue of "person" in the Constitution.

Twenty-fourth Amendment. The XXIV Amendment addresses the right to vote in primaries which prohibits the imposition of a poll tax on the right of citizens to vote.Citizens in the Twenty-fourth Amendment are the same citizens as in Amendments XIII, XIV, and XIX—natural persons.

Twenty-fifth Amendment. Amendment XXV deals with vacancies in the office of President and the chain of succession and is not is not relevant to the issue of "person" in the Constitution.

Twenty-sixth Amendment. Another prohibition in the Constitution is the Twenty-sixthAmendment. While not explicit, since it deals with the right to vote here it is again understood that Amendment XXVI refers back to Amendments XIII and XIV; i.e., the citizens in question are those born or naturalized in the United States because the right to vote is now, as in Amendment XIX, extended explicitly to those citizens who are 18 years of age or older,which are, of course, natural persons.

Twenty-seventh Amendment. Amendment XXVII deals with Congressional compensation and is not is not relevant to the issue of "person" in the Constitution.

With the critical linguistic analysis and exegesis of the Constitution pertaining to "person" we can now turn our attention to corporations as"person" in Supreme Court rulings.

5 The Supreme Court, Language, and the Social Construction of Corporations

Robinson(2016) comments that "[Th]ere is no consistent, unified approach across the Court's corporate constitutional personhood cases."Fagundes (2001) further remarks that the Supreme Court's "doctrinal distinctions reflect the absence of a theoretically unified judicial approach to legal personality" and that Supreme Court rulings that a corporation is a person "results largely from the lack of a coherent theory of the person" (Fagundes, 2001; Rivard, 1992). Pollman (2011), too.finds that the Supreme Court has expanded the doctrine of corporate personhood "without a coherent explanation or consistent approach" and that the Court has never grounded thedoctrine of corporate personhood "into a coherent concept of corporate personhood."

Ultimately, nevertheless, that "a corporation is a person is well entrenched in American law" (Pollman, 2011). In fact, John Dewey (1926), in Humpty Dumpty like fashion, dismissed the debateof corporate personhood as pointless because "person signifies what law makes it signify."[16]But that, of course, is the result of the Supreme Court's construction of corporations as persons. Mark (1987) notes that from the Second World War on the legal

[16] Humpty Dumpty is a character in the book *Through the Looking Glass*, a sequel to *Alice in Wonderland*. In a conversation with Alice, Mr. Dumpty tells Alice, "When I use a word,it means just what I choose it to mean—neither more nor less."

nature of corporationsceased to be controversial or even of interest.Lawyers today know only that a corporation is considered a person (Mark, 1987).

In this section, a sample ofSupreme Court opinions that have held corporations are persons are reviewed, beginning in 1844 and ending in 2010. There were many others sandwiched between 1844 and 2010 but the conclusions, although based on different parts of the Constitution and relying different theories of the corporation, have always resulted in the same ruling – corporations are persons. The sample selected is sufficient to demonstrate that by its language the Supreme Court has for over 150 yearssocially constructed corporations as persons by violating the rules of grammar and syntax and its own canons of construction and interpretation.

First, in Louisville, Cincinnati, and Charleston Railroad v.Letson,43 U.S. 497, 558, (1844), the Supreme Court stated

> "a corporation created by a state to perform its functions under the authority of that state and only suable there, though it may have members out of the state, *seems to us to be a person*, though an artificial one, inhabiting and belonging to that state, and therefore entitled, for the purpose of suing and being sued, to be *deemed a citizen* of that state" (emphasis added).

The issue did not focus on corporations as persons, but on corporations as citizens for purposes of jurisdiction under Article III, Section 2of the Constitution. In essence the ruling "killed two birds with one stone ("person" and citizen).

The nation was barely 50 years old, and the Court relatively inexperienced at least insofar as corporations and the Constitution are concerned, so it can be overlooked, even forgiven, for failing to conduct an analysis of either "person" or citizen in the Constitution, although it considered its ruling the result of its "maturest deliberation" and "a sound and comprehensive course of professional reasoning." "Seems to us" and "deemed to be a citizen" can scarcely be considered mature deliberation or sound and comprehensive professional reasoning. Nevertheless, the allusion to corporations as persons begins a long chain of cases holding that corporations are both citizens and persons in the Constitution.

Some consider County of Santa Clara v. Southern Pac. R. Co., 118 U.S. 394 (1886).as "the watershed…for the personification of the corporation inits own right and can be considered the beginning ofcorporate personhoodas we understand it today" (Kaeb, 2015) But, as seen in the *Letson* ruling, that is not entirely accurate.Arising in 1886, the circumstances surrounding the ruling would be amusing if the ramifications were not so serious. It could be said that the Court's analysis was sloppy, ill-conceived, and illogical. Except there was no analysis.

The main issues concerned the constitutionality of taxes imposed by the state of California. Counsel for the defendant argued that "Corporations are persons within the meaning of the Fourteenth Amendment to the Constitution of the United States." As officially reported, "Before argument Mr. Chief Justice Waite said: 'The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does.'"Yet, the ruling did not appear in the case. It was inserted in the headnotes prepared by the reporter (Piety, 2015). As noted by Horwitz (1985), "For such a momentous decision, the opinion in the Santa Clara case is disquietingly brief - just one short paragraph - and totally without reasons or precedent."

In spite of this, ninety years later, in First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), the Supreme Court recognized the importance of Santa Clara as it had dozens of time before: "It has been settled for almost a century that corporations are persons within the

meaning of the Fourteenth Amendment. Santa Clara County v. Southern Pacific R. Co., 118 U.S. 394 (1886)."

Continuing into the 21st century, in is Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010) the Supreme Court reiterated its previous constructions of corporations as persons by "recognize[ing] that First Amendment protection extends to corporations."[17]

So the reasoning boils down to something like this:

- Corporations are persons.
- The purpose of the Fourth Amendment is to protect persons from searches and seizures without a warrant.
- Therefore, corporations are protected from searches and seizures without a warrant.

At the same time:

- The purpose of the Fourteenth Amendment is to guarantee persons due process and equal protection.
- Corporations are persons.
- Therefore, corporations are guaranteed due process and equal protection.

And:

- Persons have rights to speak guaranteed by the First Amendment.
- Corporations have rights to speak guaranteed by the First Amendment because the First Amendment does not exclude corporations.
- Therefore, corporations are persons.

The circularity cannot be ignored. It is an example of the hermeneutic circle wherein the whole and the parts are interdependent. The whole is only understood through its parts and the parts are only understood through the whole(Hirsch, Jr., 1967).

6 Corporatehood

The Constitution is unambiguous in what is a"person" and what constitutes a citizen. Since the Constitution is unambiguous in itsuse of what is a "person" and what constitutes a citizen, there is no need to resort to sources extrinsic to the Constitution to determine the meaning of "person" in the Constitution. The Constitution itself explains what "person" means.

The only term that makes sense when discussing a corporation is corporation. As an adjective, "corporate" may be used to modify an organization or an entity (e.g., corporate organization) but it cannot modify "person" in order to transform a corporation into a "person."Grammatically and syntactically there is no such thing as a corporation as a "corporate person."

Likewise, there is no such thing as "corporate personhood." "Corporate personhood" is nonsensical and violates the rules of English grammar and syntax. Yet, the Gospel of "corporate personhood" abounds, becoming an ideology of modern American corporate law.

[17]The interpretations by the Supreme Court expanding or limiting the establishment of religion, prohibiting the free exercise of religion, abridging the freedom of speech or the press, or the right of the people peaceably to assemble under the First Amendment is beyond the scope of this paper. These clauses have been litigated multiple dozens of times. Rather, the issue considered here is limited to how the Supreme Court has socially constructed corporations as persons, not on constitutional rights they may or may not have.

"Personhood" is "the quality or condition of being an individual person" (Personhood, 2016).Placing the adjective "corporate" before "personhood" is a misdirection of discourse and serves no purpose other than to reinforce a social construction of corporations that have no support in the language of the Constitution. To continue the use of "corporate person" and "corporate personhood" isplaying with smoke and mirrors and merely perpetuates the (false) reality constructed by the Supreme Court that corporations are persons.

Therefore, the only term to use when discussing "the quality or condition of being a corporation" is "corporatehood." "Corporatehood removes any reference to "person" and allows discourse to proceed unencumbered with human terms.

7 Conclusion

This paper asked the questions "what is a person in the Constitution" and its concomitant question, "what is a citizen in the Constitution?" After a critical linguistic analysis and exegesis of the Constitution, and applying the Supreme Court's canons of constructions and interpretation,it answered the questions: a"person in the Constitution is a natural person., and a citizen is a natural person born or naturalized in the United States. There is no other meaning of citizen in the Constitution. If the "person" in the Constitution means natural person in one place, it means natural places in all places.

With those questions answered, the question,"is a corporation a "person" is easily answered. The answer is, "No."

Language shapes our view of the world and directs the nature of discourse. In ruling that a corporation is a "person" in the Constitution the Supreme Court the Court violated the basic rules of English grammar and syntax, did not interpret "person" consistent with the words surrounding it, and did not interpret "person" or according to its ordinary meaning. The Court has consistently disregarded its practice of construing the constitutional language of "person" in light of the terms in the Constitution surrounding it and has not given the term "person" its ordinary meaning.

Natural persons are endowed by their Creator, i.e., the "Supreme Judge of the world,"with the unalienable rights of "Life, Liberty and the pursuit of Happiness." But, these unalienable rights do not exist in the air. These unalienable rights are secured by government which is instituted among Men and whose *raison d'êtr*e is to secure the unalienable rights of Life, Liberty and the pursuit of Happiness.But how are these rights secured?

If, as Gerber (1996) rightly contends, the Constitution is an expression of the Declaration of Independence, the former is an extension of the latter and therefore they may be considered as having one purpose. There is a singularpurpose of the Constitution, the Bill of Rights, and all other amendments. That one purpose is"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" in furtherance of securing the unalienable rights of natural persons enumerated in the Constitution: the rights toLife, Liberty and the pursuit of Happiness.

But how is that one, singular purpose fulfilled? The Declaration of Independence explains. "By Authority of the good People of these Colonies [who] solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States….and as Free and Independent States, they have full Power to… do all other Acts and Things which Independent States may of right do."Therefore,as Free and Independent States doing acts which Independent States may of right do, "We the People of the United States… do ordain and establish this Constitution for the United States of America" in order to secure the rights of Life, Liberty, and Happiness endowed by their Creator to natural persons.

There is but one purpose for the Constitution as a whole. There is not one purpose for

each amendment.So for the Supreme Court to isolate different purposes for each amendment without considering the Constitution as a whole ignores thesingular purpose of the Constitution; i.e., to secure the rights of natural persons to Life, Liberty, and Happiness which are endowed by their Creator, the Supreme Judge of the World. The purpose of any right cannot be understood without first understanding "person."

For the Supreme Court to say that the Constitution's meaning of "person" includes non-natural persons it can only say so legitimately after a critical linguistic analysis and exegesis of "person" in the Constitution and explicitly stating that after its analysis and exegesis there is no support in the Constitution that limits persons to natural persons. The Supreme Court will have to declare that non-natural persons are endowed by the Supreme Judge of the world with unalienable rights to Life, Liberty, and Happiness.

As it stands now, the Supreme Court has socially constructed corporations as persons thereby creating a culture, or perhaps more accurately, a cult, of corporations as persons.

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Appendix A. Declaration of Independence

IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness…

. . . .

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

APPENDIX B. U.S. Constitution[18]

The Constitution of the United States

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

[18] All forms of "person" are highlighted for emphasis.

of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I: Legislative

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2

The House of Representatives shall be composed of Members chosen every second Year by the ***People*** of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No ***Person*** shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free ***Persons***, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No ***Person*** shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no ***Person*** shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day,

and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no ***Person*** holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

- To borrow Money on the credit of the United States;
- To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
- To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
- To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
- To establish Post Offices and post Roads;
- To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
- To constitute Tribunals inferior to the supreme Court;
- To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

- To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
- To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;
- To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
- To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;
- To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; — And
- To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each ***Person***.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no ***Person*** holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II: Executive

Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress:

but no Senator or Representative, or ***Person*** holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The ***Person*** having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no ***Person*** have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the ***Person*** having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No ***Person*** except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any ***Person*** be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III: Judicial

Section 1

The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No ***Person*** shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the ***Person*** attainted.

Article IV: States

Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A ***Person*** charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No ***Person*** held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3

New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4

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.

Article V: Amendment

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI: Supreme Law

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII: Ratification

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the ***people*** peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the ***people*** to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the ***people*** to be secure in their ***persons***, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the ***persons*** or things to be seized.

Amendment V

No ***person*** shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any ***person*** be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the ***people***.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the ***people***.

Amendment XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the ***person*** voted for as President, and in distinct ballots the ***person*** voted for as Vice-President, and they shall make distinct lists of all ***persons*** voted for as President, and of all ***persons*** voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The ***person*** having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no ***person*** have such majority, then from the ***persons*** having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. — The ***person*** having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no ***person***have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no ***person*** constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII

Section 1

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Section 1

All ***persons*** born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any ***person*** of life, liberty, or property, without due process of law; nor deny to any ***person*** within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of ***persons*** in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No ***person*** shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

Section 1

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2

The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the ***people*** thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the ***people*** fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

Section 1

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Section 1

The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such ***person*** shall act accordingly until a President or Vice President shall have qualified.

Section 4

The Congress may by law provide for the case of the death of any of the ***persons*** from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the ***persons*** from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Section 1

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII

Section 1

No ***person*** shall be elected to the office of the President more than twice, and no ***person*** who has held the office of President, or acted as President, for more than two years of a term to which some other ***person*** was elected President shall be elected to the office of President more than once. But this Article shall not apply to any ***person*** holding the office of President when this Article was proposed by Congress, and shall not prevent any ***person*** who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII

Section 1

The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV

Section 1

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV

Section 1

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge

the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI

Section 1

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.