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Prisoner of the Book: The Living Constitution and Borges' Book of Sand

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Abstract: This paper uses Jorge Luis Borges' short story *The Book of Sand* (1975) to examine the aversion of Constitutional originalists in the United States to the idea of the Constitution as a living text. Contrasting Justice Antonin Scalia's rhetoric of magic as used to denounce the "living Constitution" with Justice William J. Brennan's conception of an originalist Constitution as a ghost terrorizing the present, the paper asks what vision of the text these metaphors construct, and how they make the Constitution of the other into a "nightmarish" object.

Keywords: Law and literature, living Constitution, Originalism, Constitutional theory, (Constitutional) rhetoric.

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Prisoner of the Book. The Living Constitution and Borges' Book of Sand

"Look at the illustration closely. You'll never see it again." So the stranger tells the main character (and narrator) in Borges' short story *The Book of Sand* (Borges 1979). The Book of Sand is infinite: it is impossible to find the first or last page, the pages are in no particular order, and the images differ every time you open it. The narrator buys the book and becomes obsessed with it; he stops seeing his friends, can barely sleep, and when he does, dreams of the book. He concludes that the book is a nightmarish object, and it has made him equally monstrous. Distraught, he decides to leave it behind in the National Library.

In this paper, I read the aversion to the Constitution as a living text through the lens of the terror of the infinite book in Borges' *The Book of Sand*. The Living Constitution is the Constitution understood as a text whose meaning lies open, speaking differently in each era. Unlike Living Constitutionalists, Originalists believe that the meaning of the text is fixed at the moment of ratification. "It isn't a living document," Supreme Court Justice Antonin Scalia emphasized again and again: "It's dead. Dead, dead, dead!" (Patel 2012). The terror of the Living Constitution can be understood as the terror of a living book with a meaning that is eternally shifting, displaying an animism with which the Constitution as a legal document is confronted.

In a first part, I zoom in on Antonin Scalia's construction of the Living Constitution as a nightmarish object in his Supreme Court opinions and theory of constitutional interpretation. I show how he uses a rhetoric of magic to denounce the Living Constitution. In a second part, I turn Borges' description of the Book of Sand against that view: the living book, as the "Book of Books," is the condition for meaning rather than an exception. The cases and theory of Supreme Court Justice William J. Brennan form a paradigmatic example of Living Constitutionalist rhetoric. Brennan doesn't appeal to the opposite nightmare of a Dead Constitution to portray the Originalist Constitution. Rather, he transforms the choice into different versions of a Constitution that is always alive: it is either a healthy, breathing Constitution that openly interacts with time, or it is a ghost from the past terrorizing the present. In a third section, I zoom out from Scalia's and

[1] I am indebted and grateful to Peter Brooks, Robert Post, Raf Geenens, Ryan B. Morrison and Rowan Gossett for their insightful comments on earlier versions of this paper.

Brennan's visions of the Dead and Living Constitution to the relationship of text and reception in constitutional interpretation, to ask how the text can have authority within an infinity of interpretative possibilities. Through Peter Brooks' theory of the literary text as transference, I propose a relational model in which text and reader are both changed by a dialogical encounter, and in which anxiety towards the Living Constitution shows itself as anxiety around the self-changing dialogue of meaning-making. In this way, I dive into the metaphors of the Living and Dead Constitution in the debate between Originalism and Living Constitutionalism: what vision of the text do both project, and how do they make the dreaded Constitution of the other into a "nightmarish object"?

1. Scalia and the fear of the Living Constitution

Antonin Scalia, during his work as a Supreme Court Justice from 1986 to 2019, became known as one of the most outspoken exponents of textual originalism. Although he did not always adhere to his interpretative method in practice (Chemerinsky 2000), he clarified its principles in several places. Briefly summarized, the judge's task is to apply the original meaning of the Constitutional text to the issues that arise. Scalia equates that original meaning with the ordinary public meaning that the text had at the time of ratification, which he in turn defines as what a reasonable ordinary citizen would have understood the words to mean. In doing so, Scalia mainly opposes three other theories of constitutional interpretation: intent originalism, in which objective meaning equals the intent of the ratifiers (impossible for Scalia, as that would anchor the law in a subjective and fallible legislature)[2]; strict constructionism, in which meaning is reduced to the most literal meaning of the words (while the context of the Constitution calls for an expansive interpretation); and evolutionism (equated by him with 'Living Constitutionalism'), which looks at current meaning against the backdrop of the needs of a changing society (because that would open the door to abuse of power by judges) (Scalia 1998: 37-38). The correct interpretative method is what he and Bryan Garner have labeled "fair reading": "determining the application of a governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued" (Scalia & Garner 2012: 52). This means relying on: the language

[2] Nevertheless, Scalia agrees with Ronald Dworkin that his account could also be called 'semantic intentionalism': the intention of what the words say as opposed to what would be the consequence of their saying them (Scalia 1998: 144). In practice, however, Scalia's views do imply 'expectation intentionalism'. See Dworkin 1998: 121.

of the Constitution; historical linguistic research (in the case of difficult passages); and the purpose of the text, but as "gathered only from the text itself," taking into account "a word's historical associations" and "a word's immediate syntactic setting" (52). The image of the Constitution as a text that emerges from this interpretative method is a "practical and pragmatic charter of government" (Scalia 1998: 134) with the purpose "to prevent change – to embed certain rights in such a manner that future generations cannot readily take them away" (Scalia 1998: 40). This explains why Scalia considers Living Constitutionalists his first and greatest opponent, as they allow the meaning of the Constitution to change and thereby jeopardize the whole purpose of a constitution: "The Constitution is not a living organism; it is a legal document. It says something and doesn't say other things" (CBS/AP 2006).

Scalia has three central (and interconnected) arguments against the Living Constitution. First, it is unworkable because of the lack of a guiding principle in its constant mutability: "There is no agreement, and no chance of agreement, upon what is to be the guiding principle of the evolution" (Scalia 1998: 45). This makes it secondly, and according to him most problematically, anti-democratic. Because there is no guiding principle, courts can and do make their own decisions based on their subjective image of the good and the just: "An evolving constitution will evolve the way the majority wishes" (46). The true majority, the people, will be sidelined. The counter-majoritarian difficulty is thereby radicalized; power will be in the hands of nine unelected Justices. The subjective values of the individual Justice replace the objective application of democratic law. This, according to Scalia, immediately explains the appeal of Living Constitutionalism: it empowers judges, and that's why legal education keeps teaching it. In his view, only originalism can be democratic as an interpretative practice, because it corresponds to what the people actually ratified – any departure from the text would be a departure from the will of the people.[3] Third, Living Constitutionalism actually creates less freedom and thus does the opposite of what it promises. While evolutionists defend the Living Constitution because it would provide more flexibility, in reality, they use the power it gives them to prohibit practices simply because they don't like them: "Historically, and particularly in the past thirty-five years, the 'evolving' Constitution has imposed a vast array of new constraints – new inflexibilities – upon administrative, judicial, and legislative action" (41). Scalia cites the fact that society can no longer

[3] Robert Post and Reva Siegel have shown how this democratic argument for originalism grounds its authority as a political practice (as distinguished from the jurisprudence of originalism) (Post & Siegel 2006: 553).

decide for itself whether to tolerate evidence obtained in an unlawful search, or to allow the invocation of God at public-school graduations.

The Living Constitution creates the dread of Borges' short story: the Book of Sand is everything the Constitution is not and should not be according to the textualist. The first illustration of the Book of Sand that the narrator sees disappear is that of an anchor—the ultimate image of a grounding. But the book and its meaning cannot be anchored. For Scalia, a constitution must do just that: anchor the main principles of a society. Every change from then on requires the people to moor the anchor anew into firm ground—society may not set sail, so to speak. The Living Constitution becomes the Book of Sand: "a nightmarish object, an obscene thing that affronted and tainted reality itself."

Scalia's three arguments against the Living Constitution are not so much about the descriptive value of Living Constitutionalism as a theory of the status and meaning of the Constitution as about the workability and legitimacy of a judicial interpretation that takes the Living Constitution as its starting point.[4] Therefore, to make the Living Constitution suspect, he also relies on an apocalyptic vision of what believing in the Living Constitution entails. In contrast to his objective, scientific, apolitical Constitution, Scalia constructs the Living Constitution in his opinions and theory as a "monstrous book" through various rhetorical tropes, three of which I discuss: magic/deception, game/fiction, and wandering.

Scalia radicalizes the metaphor of the Living Constitution to denounce it. The Living Constitution becomes the book as an organism, with a mystically changing spirit. Living constitutionalism means "letting the intangible, protean spirit overtake the tangible, fixed words of authoritative texts" (Scalia & Garner 2012: 35). Decision-making then becomes "a kind of mystical divination" (34). Given this construction, it is not difficult to declare Living Constitutionalists crazy: "You would have to be an idiot to believe that" (CBS/AP 2006); a text is not a living organism, and people who believe that adhere to an animism that doesn't fit in the 21st century. The Living Constitution shifts toward Borges' magical Book of Sand, as contrasted with Scalia's own down-to-earth image of a text being just that: text. Scalia's exclamation that the Constitution is "dead, dead, dead!" is a grand rhetorical move on itself in this regard: with the

[4] In this respect Scalia's fear of the Living Constitution can be said to have similarities to the argument that we have to believe in God to keep the moral system intact, regardless of the truth of God's existence – as it for example appears in some of Dostojevski's works.

repetition, the Constitution dies three times, knocking all the life out of it. And if that sounds too scary to children, he calls it "an enduring constitution" (Patel 2012).

Living Constitutionalists engage in magic and deception. In *Obergefell v. Hodges* (guaranteeing same-sex marriage), Scalia argues in his dissent that the Supreme Court "has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie" (576 U.S. 644 (2015)). In *Planned Parenthood v. Casey* (upholding abortion law), he speaks of a "Nietzschean vision of us unelected, life-tenured judges-leading a Volk who will be 'tested by following,' and whose very 'belief in themselves' is mystically bound up in their 'understanding' of a Court that 'speak[s] before all others for their constitutional ideals." (505 U.S. 833 (1992)). The mystical and magical constitution is associated with judges as power-hungry tricksters, deceiving the people. Elsewhere, Scalia depicts judges as "living in a marble palace" (Patel 2012). He calls judge-made law an "intoxicating well" (Scalia 1998: 7) in which the deceptive construction of judges "plunges its victims into mazes of error" and quotes Robert Rantoul, who compares it to alcohol and "rank poison" (11). Scalia's rhetoric turns the Living Constitution into a Book of Sand as described in Borges' story: an "impossible book"; "diabolical," "nightmarish," and "monstrous," absorbing and haunting the possessor.

This rhetoric of magic extends beyond constitutional matters. In *American Nat. Red Cross v. S. G.*, the Court decided that the Red Cross was authorized to remove a state-law action from state to federal court, relying on a provision in its federal charter, authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." Scalia, in his dissent, contrasts his 'ordinary' understanding of the phrase with the Court's extraordinary manipulation. He speaks of "a 'magic words' jurisprudence that departs from ordinary rules of English usage." It is "beyond question" that the language has nothing to do with regulating the jurisdiction of federal courts. The court is "giving talismanic significance to any 'mention' of federal courts." From the construction of a "magic words approach," the majority's opinion becomes incomprehensible by definition: "I do not understand the Court to disagree with my analysis of the ordinary meaning of the statutory language." (505 U.S. 247 (1992)).

Scalia shows that the constructed magic and spirit of the text are in fact nothing but fiction or play. In *PGA Tour, Inc. v. Martin*, he dissents from the opinion that a disabled golf player must be able to use a golf cart between strikes according to the Americans with Disabilities Act of 1990. He does so with a series of literary comparisons:

> “Complaints about this case are not "properly directed to Congress." They are properly directed to this Court's Kafkaesque determination that professional sports organizations, and the fields they rent for their exhibitions, are "places of public accommodation" to the competing athletes, and the athletes themselves "customers" of the organization that pays them; its Alice in Wonderland determination that there are such things as judicially determinable "essential" and "nonessential" rules of a made-up game; and its Animal Farm determination that fairness and the ADA mean that everyone gets to play by individualized rules which will assure that no one's lack of ability (or at least no one's lack of ability so pronounced that it amounts to a disability) will be a handicap.
>
> The year was 2001, and "everybody was finally equal." (K. Vonnegut, Harrison Bergeron.) (532 U.S. 661 (2001))

Scalia appeals to the disorientation of Kafka, the absurdity of Alice in Wonderland, the incongruity of Animal Farm and the *reductio ad absurdum* of Harrison Bergeron to undermine the majority. Taken together, the literary references suggest that the Supreme Court is moving away from judicial interpretation and toward reasoning that belongs in fiction, shifting away again from the plain text: "The judgment distorts the text." Law shifts to poetry: "The world does not expect logic and precision in poetry or inspirational pop-philosophy; it demands them in the law" (*Obergefell v. Hodges*). Living Constitutionalism belongs to directionless philosophical movements like deconstruction and nihilism. "Deconstruction is fun. It is also quite useless for those who want to get on with the business of living and acting in the real world" (Scalia 1998: 138); "The good textualist is not [...] a nihilist. Words do have a limited range of meaning, and no interpretation that goes beyond that range is permissible" (24).

This aimlessness brings us to a third rhetorical isotopy that shapes Scalia’s construction of the Living Constitution: that of wandering and limitlessness. Living Constitutionalists have no foothold. Scalia cites Laurence Tribe’s description of the evolution of the freedom of speech as "launched upon a historic voyage of interpretation" and calls it "frightening" (Scalia 1998: 133). According to him, the question of "which provisions embark 'upon a historic voyage of interpretation' and which stay at home" (137) must always arise. And since there is no unequivocal answer to this, it is better to stay at home altogether. Interpretation has moved away from the home of constitutional interpretation—namely, the Constitution itself. "We should get out of this area, where we have no right to be," he concludes in *Planned Parenthood v. Casey*. He sets this home in time (the moment of ratification) and in the confines of the text as delimited ground against the

limitlessness and infinity of the Living Constitution, which is lost anyway with its "literally boundless source of additional, unnamed, unhinted-at 'rights,'" and "rootless and shifting" justifications (*United States v. Windsor* 570 U.S. 744 (2013)). This creates a "text beyond the text," a "Constitution outside the Constitution," an "invisible, unratified nondocument" (Scalia & Garner 2012: 46).

The strange and the stranger recur as a theme in *The Book of Sand*. The seller of the book is holding a suitcase: "I saw at once that he was a foreigner." But even the strangeness itself cannot be fixed. It seems at first that the stranger is from Scandinavia, but he turns out to be from the Orkneys in Scotland—which, as islands of an island, are twice removed from the mainland. The book is obtained in the outskirts of Bikaner, the margins of a town already situated abroad. There the stranger got it from an untouchable, whose caste removes him from others but even further makes it impossible to "tread his shadow without contamination." Everything around the book moves away from its own fixed presence. The language is unintelligible; it looks like Hindustani but isn't. Even in a tangible feature like the "octavo volume" of the book, infinity is implied in the number 8. The book says "Bombay" on the spine but "passed through many hands" and its origin is unknown:

> 'Nineteenth-century, probably,' I remarked.
> 'I don't know,' he said. 'I've never found out.'

Even the story cannot be fixed as a story, opening with a beginning that is erased in the text: "No, unquestionably this is not—more geometrico—the best way of beginning my story." The infinite book is at once a book of everywhere and nowhere. It ends in the basement of the library, where "maps and periodicals are kept." Newspapers and maps contain the news and position of all places, but do not themselves provide direction. Scalia does not want a constitution like a map that allows each to chart his own path. He wants a compass that points in the right direction. In the second part, I try to show why his compass can only plunge him again into infinity.

2. Brennan and the life of the Living Constitution

During his service as Supreme Court Justice from 1956 to 1990 (the last four years overlapping with Scalia), William J. Brennan showed himself an outspoken defender of the Living

Constitution. He emphasized the interaction between the reader and the constitutional text, emphasizing that the Court in its interpretation should take into account evolving demands of human dignity. The Constitution as an embodiment of human dignity is a "living charter," "not intended to preserve a preexisting society but to make a new one" (Brennan 1985: 7). Interpretation is faithful to the Constitution only if it brings the ideal of dignity to fruition in ever-renewing circumstances: "it must account for the transformative purpose of the text" (7). Constitutional interpretation can never be value-free because each judge will look at the text with their own frames of interpretation, which are already constituted by their values, experience, and circumstances. On the other hand, interpretation must not become the expression of individual will. Brennan cites three main components in the judge's relationship with the text that determine the nature of constitutional interpretation. First, the public character of the interpretation: a judge speaks for the community and is therefore responsible to that community. Second, its obligatory character: the judge cannot dwell in ambiguities like the reader of novels, but rather must make a decision. Third, judicial interpretation has consequences: it leads to an order "supported by the full coercive power of the State," and so judges must give interpretations that are received as legitimate (3-4).

Brennan's arguments against the "Dead Constitution" are primarily directed against intent originalism, but also indirectly touch on Scalia's version. First, it is arrogant to think that we can accurately grasp original intent. There is often "sparse or ambiguous" evidence (4), and there is usually much division among ratifiers. This argument can be transposed to Scalia's 'original public meaning originalism' (Barnett 2006)[5] in the sense that there is no neutral point for grasping original meaning either; we always look at historical debates starting from our own conceptual framework. This makes the democratic argument for originalism unplausible; not only did 'the' people who ratified have a very limited democratic legitimacy (with a voting group consisting of white, male property-owners), but the construction of original meaning is our active reconstruction of a "mythologically unified and homogeneous nation" (Post & Siegel 2006: 572), not the voice of the people back then.[6] Second, the apparent depoliticization of legal interpretation has political

[5] That is: to what Scalia purports theoretically to be his version of Originalism. At the beginning of his career, he relied on intent originalism, and his Originalism in practice does reflect intentionalism and evolutionism (see Dworkin 1998; Barnett 2006; Ramsey 2017).

[6] In practice, the choices in this reconstruction are also driven by current orientations. Originalism as a political practice is built on contemporary conservative activism as a politics of restoration (Post & Siegel 2006).

consequences: reducing constitutional principles to their original understanding means establishing "a presumption of resolving textual ambiguities against the claim of a constitutional right" (5). It is a passive approach to ambiguity: "Those who would restrict claims of right to the values of 1789 specifically articulated in the Constitution turn a blind eye to social progress and eschew adaptation of overarching principles to changes of social circumstance" (5). For example, Scalia argues that when the Eighth Amendment was adopted, no one thought that "cruel punishment" could include the death penalty and it would therefore be absurd to say it prevents the death penalty today (Patel 2012). But just as our understanding of equality can change and broaden over time, so can our understanding of 'cruelty'. A constitutional consequence of this evolution is thus excluded by definition.

In his cases and theory, Brennan doesn't construct a dead constitution as the antithesis of a living one, but rather presents the originalist constitution as a document that haunts the present from the past. In *Michael H. v Gerald D.*, Scalia had written the opinion of the Court and held that the due process rights of a man who wanted contact with his natural daughter had not been violated by forbidding him to do so. Brennan argues in his dissent that the majority invokes a constitution different from his own: "The document that the plurality construes today is unfamiliar to me. […] This Constitution does not recognize that times change, does not see that sometimes a practice or rule outlives its foundations." 'This' constitution is not the American constitution; it is a "stagnant, archaic, hidebound document steeped in the prejudices and superstitions of a time long past." Brennan portrays the originalist constitution as an alternative constitution in another "constitutional universe": "The atmosphere surrounding today's decision is one of make-believe." That universe dismisses present reality: "When and if the Court awakes to reality, it will find a world very different from the one it expects." The Constitution is disconnected: it "ignores the kind of society in which our Constitution exists." Scalia's opposition to the wandering constitution is reversed here: the Constitution "staying at home" is the alien one, because a constitution must travel through time to stay at home—that is, to stay in touch with reality. Brennan calls the definition of family in Scalia's opinion "out of step" with modern inclusive notions of family, "out of tune" with past decisions, "out of place" in a world of blood tests and newly constituted families.

Brennan shows that the emphasis on original meaning is actually political. In *Burnham v. Superior Court of California* (on the question of whether a New Jersey man should appear before the Superior Court of California), he concurs in Scalia's judgment but writes a separate opinion as

he does not agree that history in itself binds the due process clause to that interpretation: "I do not see why JUSTICE SCALIA's opinion assumes that there is no further progress to be made and that the evolution of our legal system, and the society in which it operates, ended 100 years ago." Brennan acknowledges the importance of history, but as fortification rather than mere legitimation. Fairness matters, too. That analysis is "not 'mechanical or quantitative,' [...] but neither is it 'freestanding,'" for "Our experience with this approach demonstrates that it is well within our competence to employ." Brennan refers to precedent to show that fair play and substantial justice are part of contemporary notions of due process. In a footnote, Scalia denounces the circularity of this reasoning: "The existence of a continuing tradition is not enough, fairness also must be considered; fairness exists here because there is a continuing tradition." According to Scalia, Brennan thus reduces his own fairness test to tradition. But Scalia fails to see that this reciprocal relationship also allows fairness to adjust tradition. Circularity then shows itself as a continuing exchange rather than reduction. 'Experience' as foundation takes the complexity of the language game of constitutional interpretation seriously and is only a sign of weakness if the game is considered *just* a game.

In his desire to undo the evolutionist game and freeze the meaning of the text in a past world, Scalia proves similar to Borges' main character. The narrator emerges as a man of knowledge who finds pleasure in mastering the world: a retired librarian with an impressive collection of books who loves Hume (the intellectualist philosopher as contrasted to the Scottish salesman's love of the romantic Robert Burns), who wants to uphold his persona of a learned man (he talks "somewhat pedantically" about his books and suggests a hypothesis about the language of the infinite book to hide his discomfort), who gets irritated by mystical comments from the salesman, and tries to find regularity in infinity (counting the pages between illustrations and noting his findings down in an alphabetized notebook). This attitude clashes with the infinite book and, when he discovers that he won't ever master it, he decides to take it out of his sight. He doesn't succeed in destroying it altogether, however; hidden in the library it can't haunt him in the same way, but it is still there: he acquires the same gloom of the stranger as the previous possessor of the book and is only "somewhat relieved": "I feel somewhat relieved now, but I do avoid even passing by Mexico Street" (Borges 2011: 85, my transl.). [7] He cannot really destroy the living

[7] "Siento un poco de alivio, pero no quiero ni pasar por la calle México." (This last sentence of the story is strangely omitted from the Penguin translation.)

book, for that would destroy life itself: "I thought of fire, but I feared that the burning of an infinite book might likewise prove infinite and suffocate the planet with smoke." The buyer of the Book of Sand cannot come to terms with the endless book, but he cannot erase its infinity either.

Several general interpretations and normative implications are possible. The story suggests that the book as literature absorbs the reader and obliterates the real world. It also addresses the infinity of interpretation; a book can be said to change at every glance because every glance is different. In this respect, the story resembles Borges' short story *Pierre Menard, Author of the Quixote*, where the twentieth-century writer Menard copies Cervantes' masterpiece word for word yet creates a different work because its meaning shifts through history and in each re-constitution by the reader. If the fear of the possessor of the Book of Sand is justified, it suggests that we must put infinity in parentheses to stay alive and keep a hold on the world. But there is also a possible reading in which the main character is too small for the infinity of the book; his intellectual ambitions cannot cope with the book's richness. This latter reading is reinforced by the epigraph of the story. "Thy rope of sands" is a verse from George Herbert's 17th-century poem, *The Collar*, in which a clergyman wants to get rid of his servile life and chart his own paths: "My lines and life are free; free as the rode, / Loose as the winde, as large as store" (Herbert 2012: 195) The collar is the clerical collar restraining him. In a series of imperatives, the speaker encourages himself to leave:

> Forsake thy cage,
> Thy rope of sands,
> Which pettie thoughts have made, and made to thee
> Good cable, to enforce and draw,
> And be thy law

He must leave behind his cage and chains made of sand. The rope is made by "pettie thoughts." To break out is to create one's own law. The Book of Sand keeps the narrator imprisoned. But read alongside the epigraph, the suggestion appears that the fear of the book is just the consequence of the narrow-mindedness of one who cannot deal with freedom. In Herbert's poem, too, the end is a return to the chains:

> But as I rav'd and grew more fierce and wilde
> At every word,

> Me thoughts I heard one calling, Childe:
> And I reply'd, My Lord.

In his struggle with the freedom of infinity, the main character mirrors Scalia. Scalia erects a law so as not to see the sand and believes it to be a cable holding together the whole. The text is the starting and ending point of interpretation. In doing so, he is not so naïve as to think that the right answer is just there to find. There may be disagreement, but it flows, according to Scalia, from disagreement among interpreters about the relevant historical material—not from the multiplicity of the text. The original meaning of the text is "usually [...] easy to discern and simple to apply" (Scalia 1998: 45). The originalist may not have all the answers, but he has "many of them" (46). This is contrasted with the undecidability associated with the Living Constitution, where "every question is an open question, every day a new day" (46)—creating a judicial prerogative. For Scalia, this is an undesirable, as well as unworkable, method: "evolutionism is simply not a practicable constitutional philosophy" (45).

The fear that the absence of determinate meaning opens the gate to an *anything goes* interpretation extends beyond judicial interpretation. Stanley Fish's description of the formalist assumption in literary interpretation applies to Scalia: "the assumption that subjectivity is an ever-present danger and that any critical procedure must include a mechanism for holding it in check" (Fish 1980: 9). It is "the Arnoldian fear that, in the absence of impersonal and universal constraints, interpreters will be free to impose their idiosyncratic meanings" (10). Scalia has the "black letter" presentation of law that Morton Horwitz' sees as characterizing formalist legal consciousness, emphasizing the "apolitical, deductive and scientific" nature of legal reasoning" (Horwitz 2009: 258). The Constitution as a practical charter provides the answer to questions, as the Bible as dogma does in theological interpretation. In *The Book of Sand*, the infinite book is exchanged for "a black-letter Wiclif"; the authoritative word of God, in gothic letters black on white, is contrasted with the "typographically poor" book and drawings "as if by a schoolboy's clumsy hand." The contrast between the two is further emphasized by the fact that the infinite book cannot take the place of the word of God: the possessor first wants to place it "in the space left on the shelf by the Wiclif," but finally places it "behind the volumes of a broken set of The Thousand and One Nights." The book cannot be pinned down; *The Thousand and One Nights* is already a succession of stories of which there is a set. By being broken, the set is yet further removed from its original form. Moreover, the main character of the story has myopia, blurring objects and thereby moving

the world away. The seller is Presbyterian, the Protestant movement that advocates the authority of Scripture. But in the story, the black letter of the Bible simultaneously reveals itself as illusion. The dogmas multiply: "In this house are several English Bibles, including the first – John Wiclif's. I also have Cipriano de Valera's, Luther's – which, from a literary viewpoint, is the worst – and a Latin copy of the Vulgate. As you see, it's not exactly Bibles I stand in need of." John Wycliffe is called "the first of all" but Wycliffe himself was a dissident, as were Cipriano de Valera and Luther; all turned the word against the word. The multiplication is further amplified by translations; Wycliffe the English, Valera the Spanish, Luther the German, the Vulgate in Latin. All present a different word of God than the original language.[8] The Bible in this sense is only seemingly the antithesis of the Book of Sand; in fact, each book is built on sand ("his book was called the Book of Sand, because neither the book nor the sand has any beginning or end"), a different constellation of existing stories. Borges said of the Odyssey that as a text it is "is a library of works in prose and verse, from Chapman's couplets to Andrew Lang's "authorized version" or from Berard's classic French drama and Morris's lively saga to Samuel Butler's ironic bourgeois novel" (Borges 1992: 1136). The infinite book thus becomes the prototype of the text itself: it is called the "Book of Books."

'The' Constitution multiplies into an unending variety of constitutions in the chain of judicial interpretations that give weight to the words, in the conflicting constitutions of majority opinions and dissents, in the conflicting notions of 'We the people,' the Living Constitution and the Dead Constitution, and in the constitution as written document versus the constitution as system, the constitution in exile, the constitution as law, the constitution as symbol or instrument, etc.

The fear that the absence of boundaries makes meaning impossible is understandable according to Fish (he describes it as the fear he himself had, wanting to hold on to the integrity of the text), but ultimately does not correspond to reality. There is simply no interpretation possible in which text and reader are opposed as independent entities. This is the insight of reception theory; the text cannot be the same today as it was in 1787. Hans Robert Jauss generalized that insight in the 1960s by emphasizing the reader's constitutive role in meaning: literary meaning is not fixed but constructed through the dynamic interaction between the reader and the text. The reader always

[8] The multiplication of 'the' word of God in translations explains why some Orthodox Jewish denominations only accept the original Hebrew Torah as the basis for Torah study.

has a horizon-of-expectations with which she approaches a work, and this inevitably shifts the meaning of a work over time. The questions with which one approaches a book are co-constitutive of the answers it will give: those answers were not "just there" objectively, once and for all. (28) This does not mean that the reader simply casts her frames as nets over the work; the reader's horizon interacts with the horizon of the text, and meaning emerges in the fusion between the two. The work itself has a formative function, but only from a reception standpoint, never as an "invariable value within the work itself" (69). For Scalia, the text is always the starting point; there may be diverse interpretations, but they are secondary due to the reader's distance or because there are diverse applications. Jauss and Fish reverse the direction: we question a text from our values, patterns, etc., and thus make the meaning itself change, not merely the application.[9]

A text that "speaks for itself" is important as a metaphor to underscore the power of style and internal consistencies of the text, but remains a metaphor – in a vacuum, each text is meaningless. Scalia extends the metaphor to the point where his own Dead Constitution turns into the living book he rejects. The words do the work; we become servants. In Borges' story, the narrator is a "prisoner of the book." But a "prisoner of the book" is exactly what the reader of a Dead Constitution would like to be, turning the judge into the slave of static words and the dead hand of the past. "The text of the Constitution, and our traditions, say what they say and there is no fiddling with them," Scalia writes in *Planned Parenthood v. Casey*, ascribing to the Constitution and tradition an agency against which the modern interpreter cannot act. Even if he does not assume the ratifiers' intent as authoritative, he retains the presence thesis of language that Derrida undermines: that meaning is in the word rather than in a relationality that can never be pinned down. As Geoffrey Hartman writes, "The personification of 'Sprache' shows that those who put author or ego down are still potentially mastered by the idea of presence itself, which persists even without the concept of a sovereign subject, because of the privilege accorded to voice [...] as the foundation of the written word" (Hartman 1982: 5). Scalia doesn't situate the sovereign origin of meaning in the intent of the ratifiers, but rather replaces it with a personified version of the text; through expressions such as "the words suggest" and "the words say it plainly," he becomes the ventriloquist of words which appear to speak for themselves.

[9] In this sense Ronald Dworkin doesn't do enough justice to the truly living nature of the Constitutional text. His principled reading of the Constitution (holding that certain key constitutional provisions are abstract principles, rather than concrete rules) only accounts for living *applications* of fixed principles. He explicitly states the Constitution itself doesn't change (Dworkin 1998: 122).

This self-reference also ultimately results in infinity, as Laurence Tribe notes in a response to Scalia's interpretive philosophy: "There is certainly nothing in the text itself that proclaims the Constitution's text to be the sole or ultimate point of reference – and, even if there were, such a self-referential proclamation would raise the problem of infinite regress and would, in addition, leave unanswered the very question with which we began: how is the text's meaning to be ascertained?" (Tribe 1997: 77-78). Infinite regress is at the heart of Scalia's philosophy of interpretation because he always throws the text back on itself, equating words and meaning. Purpose can only be considered if it is suggested in the text itself, but what determines that the suggestion is in the text? His textual originalism breathes life into the Dead Constitution but turns it into a ghost by anchoring life in a time that is no more. In this way, he ends up like Borges' main character who is thrown back on himself and becomes a mirror of the book while the world around him fades out. This puts Scalia in the position that he attributes to his opponent; in the absence of a clear guideline for interpretation, historical meaning becomes that guideline, making each day a new day to select the right history. There seems to be no escape from a form of infinity in relation to the Constitution and constitutional interpretation: there are always other possible interpretations, other perspectives. Law cannot assume an overarching and all-solving constitutional interpretative theory. But as I suggest in the third and final part of this paper and contrary to what Scalia believes, that is the basis of the power and authority of law — not its death sentence.

3. The authority of a living text

In this final section, I zoom out from Scalia's and Brennan's visions of the Dead and Living Constitution to the authority of a living text. How can the constitutional text acquire authority when there are infinite interpretative possibilities – and escape Scalia's fear that "by trying to make the Constitution do everything that needs doing from age to age, we shall have caused it to do nothing at all"? (Scalia 1998: 47).

A more positive approach to the infinite book is embedded in Borges' story in its link to India: "Bombay" is printed on the spine of the Book of Sand, it is obtained in Bikaner, and the characters resemble a Hindustani language. At the age of sixteen, Borges became fascinated with Buddhism through his reading of Schopenhauer. In Buddhism, he thought he had found a non-

dogmatic religion (where Buddha himself could be questioned) with an emphasis on change and the endless flux of life. Compared to Western tradition, nothingness is generally understood more positively in Eastern religions as the potentiality to receive something rather than as the negation of existence. Borges speaks of a "real infinity" in Buddhism through an ongoing rebirth in the transmigration of karma, which is not an essence that is transplanted into another body but rather what Borges calls a mental structure “in a perpetual weaving and interweaving process” (Borges 2006). The positive force of Buddhist nihilism, in Borges' understanding, is not an existentialist impetus to build an essence out of open existence itself, but the disconnection of the self: nirvana is not a sublimation of the self, but comes about through meditation where interconnectedness comes to the fore. The Book of Sand is seen by the untouchable Indian as a “talisman,” gaining a positive power beyond definition. It is the “Holy Writ,” as the writing in the book changes just like life itself.

The Constitution as the defining origin, according to that philosophy, can never become the signifier because it would freeze the world rather than provide answers. (It is what Jack Balkin has called Skyscraper Originalism as contrasted to Framework Originalism: the Constitution is finished and can only change by amendment (Balkin 2008).) How can constitutional meaning be understood relationally?

Peter Brooks’ model of the text as transference offers a fruitful starting point. In “The Idea of a Psychoanalytic Literary Criticism” Brooks develops a literary theory based on Freud's transference model. In psychoanalysis, transference is the transfer of affect from the past to the present in the relationship between analysand and analyst. A transference neurosis occurs: in the process of psychoanalysis, the analysand develops a series of psychological experiences as a present representation of what they experienced. The psychoanalyst then tries to translate these back into the terms of the past as a present force, to make the analysand come to terms with their experience and open up the space to continue their lives. In this way, retrospective meanings are produced, but in translating them back they become something else: they create an intermediate region (Zwischenreich) between illness and reality, constructing an artificial illness that becomes a real experience in which the analyst can intervene.

Brooks sees the realness and artificiality of that intermediate region as very similar to the literary text, and the analyst as very similar to the reader. In the text, there is an appeal to the reader in the form of an implicit or explicit ‘you.’ The reader responds to this ‘you’ and thus collaborates

in the creation of meaning. The text is then "a semiotic and fictive medium constituted as the place of affective investments that represent a situation and a story as both symbolic (given the absence of situation and story except 'in effigy') and 'real' (given the making-present of situation and story through their repetition)" (Brooks 1987: 345). The text as transference shows what in the story must be rethought and reordered, which also makes the text an actor in further guiding the reader: "Meaning in this view is not simply 'in the text' nor wholly the fabrication of a reader (or a community of readers) but comes into being in the dialogic struggle and collaboration of the two, in the activation of textual possibilities in the process of reading" (345). Thus, the text is not an independent entity that presents itself to us from the past, but rather is already actualized through its reading. But the reader cannot just do whatever she wants with it; interpretation is the exploration of textual possibilities in the transference.

The Constitution, of course, is not simply equivalent to a literary text; its composition is not (or not primarily) concerned with aesthetic power, and Justices seek an authoritative and binding interpretation. But it is not so crazy to apply Freud's model to constitutional interpretation; Freud himself used legal terms such as ‘cases,’ ‘processes,’ and ‘defense.’ A psychoanalytic view of law is perhaps most obvious in the courtroom, where the judge works toward resolution through testimony. But it also works for the relationship of a judge and the text of the Constitution and might help us to explain the fears and mental blocks that come with constitutional interpretation. Through the dialogue between the text and the judge, what we might call constitutional transference emerges; the interpretations rewrite the possibilities of the text. The judge reconstructs the promises of the Constitution as a text in dialogue with questions about present situations.[10] "The transference actualizes the past in symbolic form so that it can be repeated, replayed, worked through to another outcome" (344). The result of this constitutional transference is also "to bring us back to actuality, that is, to a revised version of our stories” (344). Each case in this way is a graft on the Constitution, and the resulting text can be reconstructed again in a future dialogue.

Brooks' model shows the creative power of the reader without a subjectivist conclusion because agency also emanates from the text. The text isn’t an origin without intervention, but listening to the text constitutes a crucial part of rewriting it: "The reader may not have written the

[10] There’s a parallel here to the temporal logic of Jack Balkin’s view of the Constitution as a narrative of redemption, meaning “not simply reform, but change that fulfills a promise of the past” (Balkin 2011: 5). However, Balkin’s notion of ‘living originalism’ may be confusing in this regard, as the promise of the past that is taken up in the interpretation is not really *of the past* but belongs to the intermediate region of reconstruction.

text, yet it does change and evolve as he works on it – as he rewrites it [...]. And as the reader works on the text, it does 'rephrase' his perceptions" (347). In Borges' narrative, the reader metamorphoses through the book; he responds in "a voice that was not mine" and becomes "monstrous" himself. In the descriptions, he becomes his own observer, as seen in the unnatural characterization: "I, who perceived the book with eyes." The infinite book is not a fantasy object, but part of reality: the possessor can see it with his eyes and touch it with "ten nailed fingers." In this way, the book "affronted and tainted reality itself." It is an "impossible book" that erases the boundary between reality and spirit.

The life of the Living Constitution must be situated correctly so it cannot be declared a magical and impossible entity. It is not the changing of words on paper (Scalia sometimes seems to rely on this absurdity to denounce the Living Constitution); it is not situated solely in the many judges who interpret it (if it were, the Constitution would not be alive because it would be swallowed up by the reader). It is not simply the different illumination of text through time, for time itself contributes to the creation of meaning because concepts and applications are not separate; concepts are rewritten through applications.[11] Rather, it is the life of the text as transference. The Constitution is alive, not in the sense that any interpreter can create the text differently according to her will, but rather in the sense that the text itself is rewritten through ongoing dialogue.

The debate would benefit from disambiguation of the text as a material document (cf. Merriam-Webster: "printed or written matter on a page"), the text as the words used ("the original words and form of a written or printed work"), and the text as the work with meaning ("a work containing such text"). It is the latter that changes, not the material Constitution in the National Archives or the words chosen (unless in amendments). But the change does not simply happen outside the text in the multiplicity of interpretation; a word is "a speech sound or series of speech sounds that symbolizes and communicates a meaning" (Merriam-Webster). In new contexts, meanings are rewritten so that we can no longer look at the meaning of an eighteenth-century word without the conceptual transformations it has since undergone. Meaning is use. We can try to live

[11] This could also be related to Borges' Buddhist inspired understanding of the relationship of subject and time, where time is not separate from being. (For an overview of the Buddhist influence in Borges' work, see Fishburn 2020) The interpretative consequences of this different notion of temporality are explored by Frank Kermode in his discussion of the difference between *chronos*, as the meaningless quantitative sequence of events, and *kairos* as the meaningful narrative time with beginning, middle and end. Because interpretation concerns the latter by humanizing time (which also means fictionalizing it), our position in time necessarily contributes to meaning-making. (Kermode 2000: 44-47).

by the use of deceased ancestors, but that is as political a choice and an interpretive debate as value-laden as choosing to place the text in dialogue with the world today.

From a psychoanalytic perspective, Scalia's anxiety becomes more understandable. As Brooks states: "The analyst also becomes the patient, espouses his delusional system, and works toward the construction of fictions that can never be verified other than by the force of the conviction that they convey" (Brooks 1987: 347). Scalia, from his rationalist view of law, cannot accept that there is no external yardstick to ground the correctness of interpretation. In constitutional transference, the self with all its unconscious patterns is involved in interpretation. Scalia continuously tries to erase himself from his opinions, but in doing so paradoxically puts himself more at the forefront in self-referencing than most other Justices. He is like the main character in Borges' story who, out of a drive for mastery over text and world, cannot help but abhor a text that dislocates his center of gravity.

But accepting situatedness as Brennan does—"We current Justices read the Constitution in the only way that we can: as Twentieth Century Americans" (Brennan 1985: 7)—also creates a basis for engaging in dialogue to produce meaning. A judge's interpretation is not simply a subjective move in the game of constitutional meaning: the judge is making an effort to best translate the Constitution to current circumstances, which changes the circumstances and the Constitution itself.

Pol Vandevelde makes a welcome distinction between interpretation as event and as act. Interpretation as event is a descriptive account where infinity comes to the fore; it is the study of interpretation from a third-person perspective where we see that each interpretation is rewritten by subsequent interpretations, and that the meaning of the Constitution is never fixed. But as act, interpretation is seen from a pragmatic perspective where the interpreter, from a first-person perspective, takes responsibility for the correctness of her interpretation (Vandevelde 2005). This is not to deny the infinity of interpretation; the first-person perspective is possible by grace of a history and future that makes the point of speaking meaningful—and makes it possible to provide a justification narrative for their particular analysis. In court, the pragmatic question of validity is even more urgent than in literary criticism; the Constitution can continue to speak when, through rewriting, the Court listens to the reconstruction and to the desire of the text and thus connects past with future.

This is akin to Wittgenstein's understanding of the possibility of meaning and understanding, even if language games have no fixed core and are subject to change: "Do not say: 'There isn't a 'last' definition.' That is just as if you chose to say: 'There isn't a last house in this road;' one can always build an additional one" (Wittgenstein 1958: 29). It is true that future constitutional interpretation may override current interpretations (an additional house can always be built), but that does not mean that a particular interpretation within a constellation cannot be the correct one. It is precisely by enrolling in the constitutional narrative constituted by those infinite possibilities that a particular possibility can be the right one. Originalism is an attempt to define the rules of the language game of constitutional interpretation, but that attempt is doomed to fail. The justification that has to be constructed for any constitutional interpretation is a rewriting of the text in relation to present questions as a coherent narrative, and must thus be a dialogue between text and interpreter where a meaningful relationship between past, present and future is constructed. In *Dobbs v. Jackson Women's Health Organization*, the dissent (by justices Breyer, Sotomayor and Kagan) ends by referencing precisely the need for this narrative as the basis for legitimacy: "In overruling Roe and Casey, this Court betrays its guiding principles." (No. 19-1392, 597 U.S. (2022)) When the text of the Constitution protects women's right to self-determination for decades and then suddenly stops doing so, the authority of the text itself is undermined.[12] The enduring Constitution thus follows precisely from the living Constitution, in which new times change our understanding. In the Book of Sand, pages sprout from within the book. We transfer the Constitution to a speaking text in our reading and are ourselves transferred by it. Scalia's fear can then itself be rewritten as the openness of a legal system in which every case singularly rewrites the constitutional narrative. For every question *is* an open question, every day a new day.

[12] On the surface, it seems possible to make the same argument for racial segregation: when the text of the Constitution protects the possibility of racial segregation, to change this would be to undermine the authority of the text. But this doesn't hold, because the majority in *Brown v. Board of Education* does ensure narrative continuity with precedent. It carefully argues why the doctrine of "separate but equal" has to be abandoned, by emphasizing the increased centrality of education in the determination of people's lives and new psychological knowledge on the detrimental impact of feelings of inferiority. *Dobbs v. Jackson Women's Health Organization*, on the other hand, plainly calls *Roe's* reasoning "exceptionally weak" and destroys women's settled expectations without naming any societal evolutions that would suddenly cast doubt on precedent.

References

American Nat. Red Cross v. S. G., 505 U.S. 247 (1992).

Balkin, Jack. (2008). “Framework Originalism and Skyscraper Originalism.” Balkinization. Retrieved May 14, 2023, from https://balkin.blogspot.com/2008/04/framework-originalism-and-skyscraper.html.

Balkin, Jack (2011). Constitutional Redemption: Political Faith in an Unjust World. Cambridge: Harvard Univ. Press.

Barnett, Randy E. (2006). Scalia's Infidelity: A Critique of "Faint-Hearted" Originalism. *University of Cincinnati law review* 75(1): 7-24.

Borges, Jorge Luis. (1979). “The Book of Sand.” In *The Book of Sand*. Trans. Norman Thomas di Giovanni. London: Penguin Books: 87-91.

Borges, Jorge Luis. (1992). “Some Versions of Homer.” Trans. Suzanne Jill Levine. PMLA 107(5), 1134-1138.

Borges, Jorge Luis. (1999). *Collected Fictions*. Trans. Andrew Hurley. London: Penguin.

Borges, Jorge Luis. (2006). *Buddhism. A lecture by Jorge Luis Borges*. Trans. Frank Thomas Smith. Southern Cross Review 48. https://southerncrossreview.org/48/borges-buddhism.htm.

Borges, Jorge Luis. (2011). *El libro de arena*. Penguin Random House Grupo Editorial España.

Borges, Jorge Luis. (2012) “Las versiones homéricas.” Biblioteca Virtual Miguel de Cervantes. Retrieved May 14, 2023, from https://www.cervantesvirtual.com/obra/las-versiones-homericas/.

Brennan, William J. (1985). “Construing the Constitution.” *U.C. Davis Law Review* 19(2), 1-14.

Brennan, William. J. (1988). “Reason, Passion, and the Progress of the Law Articles and Commentaries.” *Cardozo Law Review* 10 (1-2), 3–24.

Brooks, Peter. (1987). “The Idea of a Psychoanalytic Literary Criticism.” *Critical Inquiry* 13 (2): 334-348

Burnham v. Superior Court of California, 495 U.S. 604 (1990).

CBS/AP. (2006). “Scalia Raps 'Living Constitution'”. CBS News Special Report. Retrieved May 14, 2023, from https://www.cbsnews.com/news/scalia-raps-living-constitution/.

Chemerinsky, Erwin. (2000). “The Jurisprudence of Justice Scalia: A Critical Appraisal.” *University of Hawai’i Law Review* 22: 385–401.

Dobbs v. Jackson Women's Health Organization, No. 19-1392, 597 U.S. (2022).

Dworkin, Ronald. (1998). “Comment”. In Scalia, Antonin. *A Matter of Interpretation. Federal Courts and the Law.* Princeton: Princeton Univ. Press: 115-128

Fish, Stanley. (1980). *Is There a Text in This Class?: The Authority of Interpretive Communities*. Cambridge: Harvard Univ. Press.

Fishburn, Evelyn. (2020). “Borges and Buddhism.” In R. Fiddian (Ed.), *Jorge Luis Borges in Context* Cambridge: Cambridge Univ. Press: 211-218.

Hartman, Geoffrey H. (1982). *Saving the Text: Literature, Derrida, Philosophy*. Baltimore: Johns Hopkins Univ. Press.

Herbert, George. (2012). *Herbert: Poems*. New York: Knopf.

Kermode, Frank. (2000). *The Sense of an Ending: Studies in the Theory of Fiction with a New Epilogue.* Oxford: Oxford Univ. Press.

Michael H. v. Gerald D., 491 US 110 (1989).

Horwitz, Morton J. (2009). "The Rise of Legal Formalism." In *The Transformation of American Law, 1780–1860.* Cambridge: Harvard Univ. Press.

Obergefell v. Hodges, 576 U.S. 644 (2015).

Patel, Ushma. (2012). "Scalia favors 'enduring,' not living, Constitution". Princeton University News. Retrieved May 14, 2023, from https://www.princeton.edu/news/2012/12/11/scalia-favors-enduring-not-living-constitution.

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001).

Planned Parenthood v. Casey, 505 U.S. 833 (1992).

Post, Robert & Siegel, Reva. (2006). "Originalism as a Political Practice: The Right's Living Constitution." Fordham Law Review, 75(2), 545–57.

Ramsey, Michael D. (2017). "Beyond the Text: Justice Scalia's Originalism in Practice". *Notre Dame Law Review* 92(5): 1945-1976.

Scalia, Antonin. (1998). *A Matter of Interpretation: Federal Courts and the Law: an Essay*. Princeton: Princeton Univ. Press.

Scalia, Antonin, & Garner, Bryan A. (2012). *Reading Law: The Interpretation of Legal Texts*. Eagan: Thomson/West.

"text". (2023). In *Merriam-Webster.com*. Retrieved May 14, 2023, from https://www.merriam-webster.com/dictionary/text.

Tribe, Laurence H. (1998). "Comment". In Scalia, Antonin. *A Matter of Interpretation. Federal Courts and the Law.* Princeton: Princeton Univ. Press: 65-94.

United States v. Windsor, 570 U.S. 744 (2013).

Vandevelde, Pol. (2005). *The Task of the Interpreter: Text, Meaning, and Negotiation.* Pittsburgh: Univ. of Pittsburgh Press.

Wittgenstein, Ludwig. (1958). *Philosophical Investigations*. Trans. G. E. M. Anscombe. Oxford: Basil Blackwell.

"word". 2023. In *Merriam-Webster.com*. Retrieved May 14, 2023, from https://www.merriam-webster.com/dictionary/word.