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Charles Patrick Thomas

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# A NEW DEAL APPROACH TO STATUTORY INTERPRETATION: SELECTED CASES AUTHORED BY JUSTICE ROBERT JACKSON

*Charles Patrick Thomas*<sup>†</sup>

## I. INTRODUCTION

This Note is an examination of the judicial philosophy of Justice Robert Houghwout Jackson. Specifically, it will analyze Justice Jackson’s adjudicatory method when interpreting statutes, and argues that Justice Jackson was guided by two principles when interpreting statutes. First, Jackson valued judicial independence and restraint. To put it plainly, he thought that judges occupied a unique position in the constitutional structure. Jackson believed that a judge was to remain free from the influences of his or her own policy preferences. Judges lacked the institutional capacity, and most importantly, the constitutional warrant to make policy decisions. Policymaking was up to the legislature; the Court’s duty, on the other hand, was to interpret what the legislature had enacted. Jackson often quoted Justice Oliver Wendell Holmes: “We do not inquire what the legislature meant; we ask only what the statute means.”<sup>1</sup> Second, Jackson was inclined to consider the reliance interests of the lawyers and ordinary people whose conduct was governed by enacted legislation. Jackson opined that since lawyers and ordinary people looked to the Supreme Court for guidance when interpreting statutes, it was incumbent on the Court to provide a clear and practical method of doing so. In other words, Jackson thought that judges should restrain themselves from imputing their personal policy preferences into a statute’s meaning, and thought that courts should adopt an interpretative strategy that was easy for others operating on the ground to use.

The principles discussed above motivated Jackson to adopt two differing methodologies when tasked with ascertaining the meaning of enacted legislation. First, Jackson employed a textual approach. This approach prioritizes the “reasonably clear, public semantic meaning of enacted text over unenacted purpose and background policy context.”<sup>2</sup> Second, when Jackson did diverge from a textual

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<sup>†</sup> J.D. candidate, Notre Dame Law School. Thanks to the Journal of Legislation editing team, especially James Britton and Ashley Hornung. Special thanks to Blaine Benson, Colin Chatten, Chris Chung, Patrick Nicoll, Allison McQueen, Catherine Redlingshafer, Sam Scheuler, Anthony Gaines, Andrew Magee, Dylan Ross, Josh Levit, Pat Manion, Harkesh Patel, Kevin Thomas, Kerry Thomas, Christine Thomas, and most importantly my parents, Dawn and Chuck.

<sup>1</sup> *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 397 (1951) (Jackson, J., concurring).

<sup>2</sup> Jeffrey A. Pojanowski, *Reading Statutes in the Common Law Tradition*, 101 VA. L. REV. 1357, 1371 (2015); *see also* Frederick Schauer, *Statutory Construction and the Coordinating Function of Plain Meaning*, 1990 SUP. CT. REV. 231, 250–56 (1990).

approach, he was inclined to consider the background common law that preceded or existed concurrently with the statute.<sup>3</sup> That methodology is referred to as the traditional common law approach to statutory interpretation. This Note concludes that the underlying values proffered by these two methods of statutory interpretation were mutually consistent with Jackson's own theory of interpretation. To prove this argument, several of Jackson's opinions dealing with statutory interpretation are examined in detail.

Part I of the analysis focuses on Jackson's background, specifically his theory of judging, and highlights the problems of statutory interpretation that Jackson struggled with. Part II argues that when interpreting statutes, Jackson was motivated by his desire to constrain judging and to preserve the reliance interests of the common people whose conduct was to be governed by the enacted text. Part III considers potential counterarguments. Namely, the argument that in some cases Jackson used methods of interpretation that are contradictory to his own stated values. Part IV is a conclusion, summarizing the complete analysis.

### A. Background

Robert H. Jackson became an Associate Justice of the United States Supreme Court in 1941.<sup>4</sup> Serving until 1954, he was appointed to the Court by President Franklin D. Roosevelt. Prior to that experience, he occupied the positions of United States Solicitor General and United States Attorney General. Jackson is probably best remembered as an impressive advocate and wordsmith.<sup>5</sup> The following is a discussion of Robert Jackson's life prior to his rise to the Supreme Court.

### B. Judicial Philosophy

Prior to his time on the bench, Justice Jackson had been an active participant in the development of the New Deal. He "witnessed the judicial negation of legislative attempts to respond to the economic crises of the 1930s."<sup>6</sup> Further, he had seen the conflicts of the *Lochner* Era Court reach a climax in President Roosevelt's Court-packing plan.<sup>7</sup> When Jackson joined the Court in 1941, there was a somewhat-established tradition of judicial tolerance toward legislative attempts to regulate the economy.<sup>8</sup> But Jackson's firsthand experience observing what he perceived as the Supreme Court's judicial activism in the *Lochner* era undoubtedly sculpted his views

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3 Pojanowski, *supra* note 2, at 1358–59.

4 JEFFREY DAVID HOCKETT, JUSTICE ROBERT H. JACKSON AND THE ROLE OF THE SUPREME COURT IN AMERICAN POLITICS x (1987).

5 *Id.* ("Jackson is perhaps best remembered for the beautiful language of his opinions. The brilliance and force of his prose was second only to the elegance of Benjamin Cardozo's writings"); EUGENE C. GERHART, AMERICA'S ADVOCATE: ROBERT H. JACKSON 21 (1958) (John W. Davis assessed that "[h]e is undoubtedly a great advocate. I thought his speech at Nuremberg was one of the finest examples of advocacy I have ever read.").

6 HOCKETT, *supra* note 4, at 23.

7 *Id.*

8 G. EDWARD WHITE, THE AMERICAN JUDICIAL TRADITION: PROFILES OF LEADING AMERICAN JUDGES 191 (3rd ed. 2007).

on the appropriate role to be played by the Court in the American democracy. When Justice Jackson reached the Court, “he strove to develop a theory of adjudication that emphasized the importance of internalized constraints on judges.”<sup>9</sup>

### 1. Theory of Judging

Jackson’s judicial philosophy emphasized what he believed to be the institutional limitations of the judiciary. This theory specifically “attempted to limit the influence of judicial bias and judicial lawmaking through methodological techniques that recognized the limited and distinctive role of the American judiciary.”<sup>10</sup> In contrast to Jackson’s own philosophy, there were certainly those judges who acknowledged that the judiciary, at times, gets stuck between a rock and a hard place. In such a predicament, the judge would be required to “make hard choices between competing social values.”<sup>11</sup> In other words, those certain judges acknowledged that it was indeed their duty to weigh the benefits of competing policies when adjudicating, ultimately picking the best policy. Jackson was not one of those judges. Indeed, Jackson believed that an objectively correct answer could be found in the law, an answer that was free from a judge’s personal policy values.<sup>12</sup> In a speech he gave to the American Bar Association, Jackson disavowed the notion that the judge served as a “pragmatic decision maker.”<sup>13</sup> In that speech, he discussed what he called the “Soviet understanding of courts.” According to the Soviet understanding, the courts merely operate as “organs of governmental power, a weapon in the hands of the ruling class for the purpose of safeguarding its interests.”<sup>14</sup> This conception involves a “primitive mingling in the Court of the two functions that Western civilization years ago divided between the Courts and the legislature.” It’s this idea that all a judge does is pick the party he likes best, end of story. To Jackson, the Soviet understanding was not an accurate reflection of how judging works, or at least how it ought to work. His judicial philosophy is best summed up here:

Our concept of the Court presupposes its acceptance of decisions on policy by the legislative majorities that from time to time prevail . . . . [W]hen a ruling majority has put its commands in statutory form, we have considered that the interpretation of their fair meaning and their application to individual cases should be made by judges as independent

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9 *Id.* at 184.

10 *Id.* at 183.

11 *Id.* at 199.

12 *Id.* (“[Jackson] insisted that judges could respond to the exigencies of practical problems while at the same time basing their resolutions on principles of law that transcended merely pragmatic judgments.”); *see id.* at 184 (noting, however, that Jackson had disavowed the oracular theory of the law; he was not a believer in the “brooding omnipresence”).

13 *See* Robert H. Jackson, *The Meaning of Statutes: What Congress Says or What the Court Says*, 34 A.B.A. J. 535, 536 (1948).

14 *Id.*

of politics as humanly possible and not serving the interests of the class for whom, or a majority by whom, legislation is enacted.<sup>15</sup>

The idea is to leave the policymaking to the democratically elected majority of legislators. Indeed, this Note demonstrates later that Jackson was often willing to take what a legislature had written down and enacted quite literally. Jackson's adherence to these principles led him to adopt adjudicatory methods that constrained judicial discretion, as opposed to expanding it.

### C. Statutory Interpretation

This Note seeks to understand the methodology that Justice Robert Jackson employed when interpreting statutes. In the American legal system, there is currently no set method for interpreting statutes. As Henry Hart and Albert Sacks noted, “[t]he hard truth of the matter is that American courts have no intelligible, generally accepted, and consistently applied theory of statutory interpretation.”<sup>16</sup> Justice Jackson also expressed concerns about the lack of a set mode of interpretation; he observed: “I occasionally learn of a statute that means one thing one year and another the next. This seems to be accepted as necessary and usual, but it really indicates that there is something wrong in the process by which law is communicated in this country.”<sup>17</sup> The idea that a statute could mean something one day and another thing the next was troubling for Justice Jackson. For one thing, the lack of a clear interpretive method disrupts the reliance interests of those governed by the statutes. If the courts themselves cannot decide how legislation is to be interpreted, how are those governed by the statutes supposed to understand their rights and obligations under the law? Another problem created by the American judicial system's lack of a set method of interpretation is the amount of discretion it affords the judge tasked with interpreting the statute. This issue was quite salient for Justice Jackson.<sup>18</sup> In light of these problems, this essay seeks to examine how Justice Jackson addressed statutory interpretation issues during his time on the Court.

## I. ARGUMENT

Justice Robert Jackson viewed the judiciary as “an independent, non-political body whose function is solely to decide cases on the basis of reasonably clear mandates as to the desires of the legislative and executive branches.”<sup>19</sup> In

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15 *Id.*

16 HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW* 1169 (1994); *see also* ANTONIN SCALIA, *A MATTER OF INTERPRETATION* 14 (1997) (“We American judges have no intelligible theory of what we do most.”).

17 Jackson, *supra* note 13, at 537.

18 *Id.* (“For the individual justice to be left so much at large presents opportunity and temptation to adopt interpretations that fit his predilections as to what he would like the statute to mean if he were a legislator.”).

19 James M. Shellow, *An Analysis of Judicial Methodology: Selected Opinions of Justice Robert H. Jackson*, 45 *MARQ. L. REV.* 103, 107 (1961); *see also* Jackson, *supra* note 13, at 536 (“[W]hen a ruling majority has put its commands in statutory form, we have considered that the interpretation of their fair meaning and

consideration of this view, Jackson's methodology when interpreting statutes was guided by two principles. First, Jackson held that the judiciary should remain free from the influence of judges' individual predilections and policy choices. Jackson often wrote that courts lack the institutional capacity,<sup>20</sup> and most importantly the constitutional warrant, to engage in policy making. Second, Jackson was guided by a desire to consider the reliance interests of the lawyers and ordinary people who were tasked with interpreting statutes that governed their conduct. Jackson opined that since lawyers and the ordinary person looked to the Supreme Court for guidance when interpreting statutes, it was incumbent on the Court to provide a clear, and practical, method of doing so. Jackson's consideration of these principles often led him to advocate for either a textual "plain meaning" or "traditionalist" approach to statutory interpretation.

#### A. *Textualism*

A plain meaning analysis of statutes "prioritizes a reasonably clear, public semantic meaning of enacted text over unenacted purpose and background policy context."<sup>21</sup> Under this method, a judge interpreting a statute should focus on the plain or ordinary meaning of the text when reaching a conclusion as to the statutes meaning.

Jackson's choice of interpretive methodology was guided by his desire to constrain judges from policy making, as well as a desire to consider the ground level effects that interpretive decisions would have on lawyers and ordinary people. Considering these guiding principles, Jackson's decision to employ the plain meaning interpretive approach is an obvious one. This is so because when reading a statute, the plain meaning of the words become a "usable tool."<sup>22</sup> Plain meaning serves as common ground. It allows for two people from different backgrounds and time periods to communicate with one another, and it is the simplest method of doing so.<sup>23</sup> A plain meaning rule is easiest for lawyers to use, since the plain meaning of the English language is common ground for the English-speaking lawyering community.<sup>24</sup> The argument is that, when judges interpret statutes based on the plain meaning of the text, lawyers too will be readily able to both ascertain the meaning of a statute and give practical advice to clients as to the effects of the legislation on their

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their application to individual cases should be made by judges as independent of politics as humanly possible . . .").

20 See *United States v. Pub. Util. Comm'n of Cal.*, 345 U.S. 295, 319 (1953) (Jackson, J., concurring) ("When we decide from legislative history, including statements of witnesses at hearings, what Congress probably had in mind, we must put ourselves in the place of a majority of Congressmen and act according to the impression we think this history should have made on them. Never having been a Congressman, I am handicapped in that weird endeavor. That process seems to me not interpretation of a statute but creation of a statute.").

21 Pojanowski, *supra* note 2, at 1371–72.

22 See Schauer, *supra* note 2, at 250.

23 *Id.*

24 See *id.* at 232 (arguing "[f]or whatever they seem not to know, the Justices do know that when they ask a law clerk for a tuna fish sandwich and the briefs in *Roe v. Wade*, what they get is a tuna fish sandwich and the briefs in *Roe v. Wade*").

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conduct. Not only that, plain meaning also constrains judging. The plain meaning of words serve as an objective criterion. Instead of resorting to legislative testimony, which can often be used to advocate for a variety of meanings, a judge can constrain himself from making a policy choice between plausible meanings based on legislative testimony by using the objective criterion that is the plain and ordinary meaning of the statutory text.<sup>25</sup> The plain meaning approach to statutory interpretation protects the reliance interests of lawyers tasked with giving practical advice to their clients, and constrains judges from making policy choices. Given these benefits, it makes sense that Jackson often resorted to the employment of a plain meaning interpretive methodology when interpreting statutory text.

### 1. Exemplary Cases

The five cases examined below in detail encapsulate Justice Jackson's methodology when interpreting statutes. The cases, decided in 1944, 1945, 1951, 1953, and 1943, respectively, demonstrate a thread of decisions where Jackson's writing specifically endorses a plain meaning approach to statutory interpretation. Again, Jackson sought to maintain the independence of the judiciary, and accorded respect for the reliance interests of those interpreting statutes on the ground. As demonstrated below, those considerations often led him to endorse a plain meaning approach to statutory interpretation.

#### *a. Addison v. Holly Hill Fruit Products*

In *Addison v. Holly Hill Fruit Products*, the Court was tasked with interpreting Section 13(a)(10) of the Fair Labor Standards Act.<sup>26</sup> The relevant provision exempted wage and hour provisions for employees within the "area of production" engaged in canning agricultural commodities.<sup>27</sup> The question before the Court was whether the Administrator of the Wage and Hour division exceeded his authority under the statute to define the "area of production," by limiting the number of employees who could be engaged in canning operations.<sup>28</sup> Jackson, writing for the Court, held that the Administrator had exceeded his authority. Jackson argued that:

The natural meaning of words cannot be displaced by reference to difficulties in administration . . . . The idea which is now sought to be read into the grant by Congress to the Administrator to define "the area of production" beyond the plain geographic implications of that phrase is not

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25 See SCALIA, *supra* note 16, at 36 ("But the manipulability of legislative history has not *replaced* the manipulabilities of these other techniques; it has *augmented* them . . . . Legislative history provides, moreover, a uniquely broad playing field. In any major piece of legislation, the legislative history is extensive, and there is something for everybody. As Judge Harold Leventhal used to say, the trick is to look over the heads of the crowd and pick out your friends. The variety and specificity of result that legislative history can achieve is unparalleled.")

26 See *Addison v. Holly Hill Fruit Prods., Inc.*, 322 U.S. 607 (1944).

27 *Id.* at 609.

28 *Id.* at 610.

so complicated nor is English speech so poor that words were not easily available to express the idea or at least to suggest it.<sup>29</sup>

In other words, if Congress meant for the expanded definition of “area of production” to be included within the statute, it could have simply written it down in clear language. Because it had the linguistic tools and chose not to exercise them, the Court was entitled to rely on the ordinary meaning of the statute’s language.<sup>30</sup> Jackson continued, justifying his reliance on the plain or “ordinary meaning” of the statute’s language:

[L]egislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him . . . . While the judicial function in construing legislation is not a mechanical process from which judgment is excluded, it is nevertheless very different from the legislative function. Construction is not legislation and must avoid “that retrospective expansion of meaning” which properly deserves the stigma of judicial meaning.<sup>31</sup>

Jackson reasoned that, since legislation is supposed to govern the “ordinary man,” then it makes sense to interpret statutes how the ordinary man would—based on the language’s ordinary meaning. Thus, this allows the “ordinary man” to coordinate their conduct in compliance with the “ordinary” understanding of what the words of the statute mean. Further, Jackson believed that the ordinary or plain reading of the statute was useful because it constrained the judge from acting in a legislative capacity. Because judges would be restrained by the ordinary meaning of the statutory text, they would be unable to impute their own policy preferences into a reading of the statute. Jackson’s semantic restraint disabled the judiciary from making policy choices constitutionally reserved for legislative discretion. In these ways, the underlying benefits of a plain meaning interpretation aligned with Jackson’s desire to maintain the reliance interests of the ordinary man, as well as the independence of the judiciary.

*b. Western Union Telegraph Co. v. Lenroot*

Writing for the majority in *Western Union Telegraph Co. v. Lenroot*, Justice Jackson addressed the question whether the words “produce and ship” in the Fair Labor Standards Act of 1938 encompassed within their definition the transmission of interstate telegraph messages.<sup>32</sup> To Jackson, the answer to that question was an obvious one: “We do not think ‘ship’ in this Act applies to intangible messages, which we do not ordinarily speak of as being ‘shipped.’”<sup>33</sup> According to Jackson, a

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29 *Id.* at 617–18 (internal quotations omitted).

30 *See id.* at 617.

31 *Id.*

32 *W. Union Tel. Co. v. Lenroot*, 323 U.S. 490, 505 (1945).

33 *Id.* at 506.



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statute should mean what an ordinary reader of English would think it meant. Further, he condemned attempts to ascertain the intention of Congress. He wrote:

Ascertainment of the intention of Congress in this situation is impossible. It is to indulge in a fiction to say that it had a specific intention on a point which never occurred to it . . . . We think we should not try to reach the same result by a series of interpretations so far-fetched and forced as to bring into question the candor of Congress as well as the integrity of the interpretative process. After all, this law was passed as the rule by which employers and workmen must order their daily lives.<sup>34</sup>

Here, Jackson makes two important points that illustrate clearly the reasons for his choice to adopt a plain meaning approach. First, Jackson emphasized that the use of legislative history to ascertain what Congress would have thought is impossible and calls into question the integrity of the interpretive process. Jackson contended that the Court's guessing as to what the legislature would have thought was an impossible task. Further, Jackson believed that reliance on legislative history led judges to engage in the policy debates that surrounded the enactment of the text. Such policy debates, Jackson argued, were constitutionally delegated to the legislature. Second, because the law was meant to govern the conduct of ordinary men and women in their daily lives, Jackson thought the statute ought to be interpreted based on how ordinary men and women would interpret the text. Interpreting text based on the ordinary meaning would make it simpler for those governed by the text to understand their duties under the law, allowing them to coordinate their conduct accordingly. In those ways, a plain meaning approach to interpretation served Jackson's desires to maintain the independence of the judiciary and protect the reliance interests of those on the ground level.

*c. Schwegmann Bros., et al. v. Seagram Distillers Corp.*

In his concurring opinion in *Schwegmann Bros.*, Justice Jackson again advocated for a plain meaning approach to statutory interpretation.<sup>35</sup> At issue there was the proper interpretation of language in the Miller-Tydings Act.<sup>36</sup> In relevant part, it read: “[N]othing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale’ of specified commodities when ‘contracts or agreements of that description are lawful as applied to intrastate transactions’ under local law.”<sup>37</sup> Under the Sherman Act, price fixing was per se illegal.<sup>38</sup> However, under Louisiana law, distributors and retailers were allowed to fix resale prices via contract. Once a price fixing contract was in place, other retailers were

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<sup>34</sup> *Id.* at 508.

<sup>35</sup> *See Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395–97 (1951) (Jackson, J., concurring).

<sup>36</sup> *Id.* at 386–87.

<sup>37</sup> *Id.* at 386 (emphasis omitted).

<sup>38</sup> *Id.* at 386 (citing *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940); *Kiefer-Stewart Co. v. Seagram & Sons, Inc.*, 340 U.S. 211, 213 (1951)).

prohibited from selling at a price lower than the price stipulated in the contract.<sup>39</sup> Seagram Distillers had in place such a price-fixing scheme that Schwegmann Bros. had refused to comply with. The question before the court was whether the Miller-Tydings Act exempted Seagram's price fixing scheme from proscription under the Sherman Act because it was a "contract" that was "lawful as applied to interstate transactions" under local law. After conducting an extensive review of the House and Senate reports, the Court concluded that Congress had not intended to exempt the nonsigner laws from proscription under the Miller-Tydings Act.<sup>40</sup>

Justice Jackson agreed with the outcome in *Schwegmann Bros.*, but concurred in the judgment because he disagreed with the Court's reasoning.<sup>41</sup> To Jackson, the plain language of the Miller-Tydings Act, standing alone, justified the Court's conclusion as to the statute's meaning. He argued that the Court's use of legislative history was unnecessary, since "it is only the words of the bill that have presidential approval."<sup>42</sup> Further, he explained that there were practical reasons why the court should adopt, as often as possible, a plain meaning approach. Jackson argued that, because laws were intended for all people to live by, the Court should adopt the approach that makes the law's meaning accessible to as many as possible.<sup>43</sup> Reading a statute "on its face" allows the average citizen to "learn what their rights under [the] laws are."<sup>44</sup> The use of legislative history, he continued, would result in only those law offices with the means to afford and house the legislative materials being able adequately advise clients as to what the laws meant. He further argued that judicial use of legislative history failed to adequately constrain judges:

[T]o select casual statements from floor debates . . . as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions . . . . For us to undertake to reconstruct an enactment from legislative history is merely to involve the Court in political controversies which are quite proper in the enactment of a bill but should have no place in its interpretation.<sup>45</sup>

To Jackson, the Court's use of legislative history involved the Court in a political decision, a decision which the Court lacked the institutional capacity to make.

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39 See *Schwegmann Bros.*, 341 U.S. at 387 ("In other words, the Louisiana statute enforces price fixing not only against parties to a 'contract' but also against nonsigners.").

40 See *id.* at 387-96 ("[W]hen we read what the sponsors wrote and said about the amendment, we cannot find that the distributors were to have the right to use not only a *contract* to fix retail prices but a *club* as well.").

41 See *id.* at 395-97 (Jackson, J., concurring).

42 *Id.* at 396 ("It is not to be supposed that, in signing a bill, the President endorses the whole Congressional Record.") (Jackson, J., concurring); for another critique of legislative history see *Hamdan v. Rumsfeld*, 548 U.S. 557, 665-68 (2006) (Scalia, J., dissenting) ("Worst of all is the Court's reliance on the legislative history of the DTA to buttress its implausible reading . . . . [H]ere, the statutory language is unambiguous. But the Court nevertheless relies both on floor statements from the Senate and (quite heavily) on the drafting history . . . [t]o say that what moved [the] Senators . . . [a]nd to think that the House and the President also had this rejection firmly in mind is absurd.").

43 See *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395-97 (1951) (Jackson, J., concurring).

44 *Id.* at 396.

45 *Id.*

Once again, in *Schwegmann Bros.*, Jackson disagreed with the use of legislative history because it allowed the judge to make policy choices. Plainly, Jackson argued that use of legislative history allowed judges to pick and choose from the history behind the enacted text. A judge could then pick and choose testimony to support an argument for his or her reading of what the statute *should* mean.<sup>46</sup> Such a use of legislative history allowed the judge to substitute their own policy preferences into the statutory meaning. Further, Jackson endorsed the plain meaning approach for yet another reason. On Jackson's account, using a text-based approach gave lawyers or ordinary citizens a helpful tool when interpreting statutes on the ground. Under Jackson's approach, when asked what a statute meant or what conduct it proscribed, the lawyer would simply look to the plain meaning of the text. Easier access to the meaning of the statute meant that the ordinary person would be more readily able to curb their conduct into conformance with the laws. Use of legislative history, on the other hand, would often leave the ordinary citizen guessing as to what a statute actually meant and what the law required of them.

*d. United States v. Public Utilities Commission of California*

Two years after *Schwegmann Bros.* was decided, Justice Jackson again employed a textual methodology in his concurring opinion in *Public Utilities Commission*.<sup>47</sup> Reemphasizing his arguments from *Schwegmann Bros.*, he once again attempted to persuade the Court to adopt a text-based approach to statutory interpretation.

In *Public Utilities Commission*, the Court was tasked with interpreting the Federal Power Act. There the Federal Power Commission ("FPC") asserted regulatory jurisdiction over power sales between a California utility and a Nevada county.<sup>48</sup> The FPC argued that Part II of the Federal Power Act granted them regulatory jurisdiction over the sale.<sup>49</sup> The Public Utility Commission of California ("PUC"), on the other hand, argued that sales of electricity to municipalities, like the ones at issue, were excluded from federal regulation under Part II of the Federal Power Act. PUC pointed to subsection (d) of Section 201 of the Act, which defined "sale of electric energy at wholesale" as meaning a "sale of electric energy to any person for resale."<sup>50</sup> Furthermore, Section 3(4) of the Act equated a "person" to an "individual or a corporation," and the term "corporation" defined under Section 3(3) did not include municipalities within its definition.<sup>51</sup> PUC argued that this exclusion of the term "municipality" from Section 201's jurisdictional definition meant that the sale of electricity between the California utility and the Nevada County was exempted from Federal jurisdiction, and therefore, subject to local rate regulation.<sup>52</sup> The majority disagreed with this argument. Relying heavily on the legislative history

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<sup>46</sup> *See id.*

<sup>47</sup> *United States v. Pub. Util. Comm'n of Cal.*, 345 U.S. 295, 319–21 (1953) (Jackson, J., concurring).

<sup>48</sup> *Id.* at 297–99.

<sup>49</sup> *Id.* at 299 (In relevant part, § 201(b) granted the Federal Power Commission authority over "the transmission of electric energy at wholesale in interstate commerce.").

<sup>50</sup> *Id.* at 312.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

of the act, the Court focused its attention of the House Reports definition of Subsection (d) of Section 201.<sup>53</sup> That redefinition stated: “A ‘wholesale’ transaction is defined to mean the sale of electric energy for resale.”<sup>54</sup> The Court, therefore, concluded that “the Congress attached no significance . . . to . . . the word ‘person,’ and in fact did not intend it as a limitation on Commission jurisdiction.”<sup>55</sup>

Jackson, displaying his aptitude for writing, stated that he would have more readily agreed with the majority had they analyzed the language of the statute—instead of conducting a “psychoanalysis of Congress.”<sup>56</sup> He argued that the Court’s guessing as to what “Congress probably had in mind,” was to involve the Court in political decision-making that was constitutionally reserved for the legislative branch.<sup>57</sup> He went as far as calling the majority’s decision “legislation” before attacking the opinion on other grounds.<sup>58</sup> According to Jackson, the majority’s decision had serious consequences, as it disrupted the reliance benefits for those operating on the ground level.<sup>59</sup> He complained that, if the lawyers arguing the case could not get their hands on the legislative materials that the Court used to support its holding, how were every day, small-town lawyers tasked with giving clients practical advice supposed to predict how a statute would be interpreted?<sup>60</sup> According to Jackson, use of legislative history left the law inaccessible to those who were governed by it. Jackson condemned the Court’s reliance on the “inaccessible law” of legislative history.<sup>61</sup>

*Public Utilities Commission*, again, exemplified Jackson’s consistent advocacy for a plain meaning approach to statutory interpretation. He argued that the Court’s use of legislative history disturbed ground-level reliance interests of those attempting to interpret statutes. On Jackson’s account, the use of legislative history turned the Court to act as an ad hoc legislature, allowing the Court to adjudicate policy issues that were properly reserved to the legislative branch.

*e. Securities and Exchange Commission v. C. M. Joiner Leasing Corp.*

In *C. M. Joiner Leasing Corp.*, the Court was tasked with determining whether oil and gas leases or sales of interest in oil and gas leases fell within the scope of the term “security” or “investment contract” under Section 2(1) of the Securities Act of 1933.<sup>62</sup> Speaking on behalf of the majority, Justice Jackson found that they did.<sup>63</sup> The text of the Act was a foundation of Jackson’s reasoning.<sup>64</sup> Addressing the

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53 *Id.* at 313.

54 *Id.*

55 *Id.*

56 *Id.* at 319 (Jackson, J., concurring).

57 *Id.*

58 *Id.*

59 *See id.*

60 *See id.* at 319–20.

61 *See id.*

62 *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344 (1943).

63 *Id.* at 355.

64 *Id.* (“In the present case we do nothing to the words of the Act; we merely accept them.”).

argument that the statute should be construed strictly because violations of the Act were crimes, Jackson retorted that the rule of strict construction “is not to be so applied as to narrow the words of the statute to the exclusion of cases, which those words, in their ordinary acceptance . . . would comprehend.”<sup>65</sup> Jackson felt that the words of the statute should be read to their full meaning, or where there were two plausible meanings, the statute should be read in favor of the wider, more popular meaning.<sup>66</sup> Here, again, Jackson adopted a plain meaning approach. He held that the statute should be read in accordance with how it would be read by the ordinary person. In *C. M. Joiner Leasing Corp.*, Jackson rejected an approach defining words too narrowly. According to Jackson, the statute should be understood how the ordinary person would understand it. In turn, citizens would understand what the law required of them. In Jackson’s view, adoption of the plain meaning rule meant that ordinary citizens would have easier access to the meaning of the statutes that governed their conduct.

*Holly Hill Fruits, Lenroot, Schwegmann Bros., Public Utilities Commission, and C. M. Joiner Leasing Corp.* all evince Jackson’s use of plain meaning in statutory interpretation. They also clearly demonstrate that Jackson’s use of the plain meaning approach was guided by the principles of judicial independence and the coordination benefits associated with the Court’s adoption of a clear, easily applicable rule. In many situations, Jackson’s principles of interpretation and the outcomes associated with a plain meaning interpretation aligned.

## 2. Further Support

Jackson also joined in several opinions where the plain meaning rule was endorsed. They further illustrate Jackson’s consistent use of the plain meaning rules when interpreting statutes.<sup>67</sup>

Jackson joined a dissenting opinion by Justice Felix Frankfurter in *United States v. Sullivan*.<sup>68</sup> In *Sullivan*, the majority relied heavily on the “intent” of Congress.<sup>69</sup> Frankfurter, in dissent, wrote: “[i]f differentiations are to be made in the enforcement of the Act and in the meaning which the ordinary person is to derive from the Act, such differentiations are interpolations of construction.”<sup>70</sup> Frankfurter lamented that, in taking “nine pages” to arrive at the meaning of the statute, the Court had failed in its duty to provide clear instructions to those whose conduct was governed by the

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65 *Id.* at 354 (Jackson drew a distinction between strict construction and a plain meaning analysis, as did Antonin Scalia); see also SCALIA, *supra* note 16, at 23 (“Textualism should not be confused with so-called strict constructionism, a degraded form of textualism that brings the whole philosophy into disrepute . . . . A text should not be construed strictly . . . it should be construed reasonably”).

66 *C. M. Joiner Leasing*, 320 U.S. at 355.

67 Namely, plain meaning produces ground level coordination benefits and gives the judge an objective basis for decision-making.

68 *United States v. Sullivan*, 332 U.S. 689, 705–07 (1948) (Frankfurter, J., dissenting) (Holding that a defendant who removed tablets from a properly labeled and branded bottle, placed them in pill boxes not properly labeled, and sold them to customers had violated § 301(k) of the Federal Food, Drug, and Cosmetic Act which prohibited the misbranding of drugs).

69 *Id.* at 695.

70 *Id.* at 707.

statute.<sup>71</sup> Jackson also joined the Court in its decision in *Ex parte Collett*, which expressly adopted a plain meaning rule.<sup>72</sup> There, writing for the Court, Justice Vinson wrote that “[t]he plain . . . meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.”<sup>73</sup> These cases demonstrate that Justice Jackson, in an effort to exercise judicial restraint and preserve coordination benefits, was generally inclined to adopt a plain meaning analysis when interpreting statutes.<sup>74</sup>

### B. *The Traditional Approach*

Justice Jackson frequently relied on a text-based analysis when interpreting statutes. This was so because the use of plain meaning allowed Jackson to interpret statutes without making policy choices while protecting the reliance interests of the ordinary person. This theory certainly works well when a judge is interpreting relatively clear text. But the plain meaning analysis tells a judge very little about what to do in the many cases in which legislation is not clear, or where reasonably clear text conflicts with background purpose, the broader fabric of the law, or contemporary values.<sup>75</sup> So the question becomes: what did Jackson do in these hard cases? This portion of the Note contends that Justice Jackson, when confronted with these interpretive “bumps in the road,” would rely on what scholars refer to as the “common law tradition” or the “traditionality of statutes” when interpreting enacted text.<sup>76</sup> The traditional approach notes that statutes are “situated in and deeply affected by contexts which they presuppose, from which they cannot escape, and which make it possible for them to have such effects as they do.”<sup>77</sup> These “contexts,” argues Krygier, are highly traditional.<sup>78</sup> According to Krygier, statutes face a problem in that they must communicate to indefinite numbers of strangers, over long periods of time, in unpredictable circumstances, what a statute requires of them.<sup>79</sup>

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71 *Id.* at 705.

72 *See Ex parte Collett*, 337 U.S. 55, 60 (1949).

73 *Id.* at 61 (internal quotations omitted).

74 *See Jones v. Liberty Glass Co.*, 332 U.S. 524, 531 (1947) (“In the absence of some contrary indication, we must assume that the framers of these statutory provisions intended to convey the ordinary meaning which is attached to the language they used. Hence we read the word ‘overpayment’ in its usual sense . . . .”) (internal citations omitted); *Shapiro v. United States*, 335 U.S. 1, 71 (1948) (“[The Court] should not base that inference on ‘legislative history’ of such dubious meaning as exists in this case. . . . [I]n this case, the plain language of Congress requires no such choice.”); *62 Cases, More or Less, Each Containing Six Jars of Jam v. United States*, 340 U.S. 593, 596 (1951) (“[O]ur problem is to construe what Congress has written. After all, Congress expresses its purpose by words. It is for us to ascertain—neither to add nor subtract, neither to delete nor to distort.”); *Rosenberg v. United States*, 346 U.S. 273, 294 (1953) (Holding that the Court should exercise restraint when interpreting statutes in conjunction, “the intention of the legislature . . . must be ‘clear and manifest.’”); *United States v. Harris*, 347 U.S. 612, 820–21 (1954) (Emphasizing the importance of statutory clarity).

75 *See generally* Pojanowski, *supra* note 2; *see generally* Martin Krygier, *The Traditionality of Statutes*, 1 *RATIO JURIS* 1 (1988).

76 Pojanowski, *supra* note 2, at 1357.

77 Krygier, *supra* note 75, at 27.

78 *Id.*

79 *Id.*

Traditional common law approaches fill in the gaps that will almost certainly arise in statutory interpretation. Interpretative communities—i.e., the legislature, courts, and lawyers—over time develop traditions involving the canons and conventions applied when interpreting statutes.<sup>80</sup> These traditions of interpretation were highly pervasive in Jackson’s interpretive methodology. This common law approach does not replace, but rather supplements, the interpretative gaps left by a textual interpretative methods. As Professor Jeffrey Pojanowski notes:

[C]ommon law formalism more readily reconciles faithful agency in statutory interpretation with the persistence of background, unwritten law. Federal court decisions, including those written by formalist judges, will find implied common law defenses to statutory crimes, read terms in light of common law meanings, and resolve conflicts of law questions without appeal to statutory text.<sup>81</sup>

By incorporating traditional methods into his interpretation of statutes, Jackson was able to remain true to his desire to preserve the reliance interests and constrain judicial decision-making. First, where a tradition exists, there are already background coordination benefits associated with applying that tradition when interpreting statutes. Ordinary people have acted in accordance with the traditions that predated the statutes; reading the tradition out of the statute would rupture the reliance interests of those who have coordinated their conduct in compliance with those background traditions. Second, as Krygier notes, “traditions also constrain both what is written and what is taken to have been meant by what is written.”<sup>82</sup> Tradition, like plain meaning, serves as an objective criterion on which to base a decision. The judge is not free to diverge from the traditional interpretative method; thus, restraining the judge from engaging in policy making. In this way, Jackson employed the traditional common law approach to handle situations where plain meaning left him hanging in the wind. And, in using tradition, he was still able to adhere to the principles of judicial restraint and the preservation of ground level coordination benefits. The cases discussed below evince Justice Jackson’s use of traditional common law principles in cases of statutory interpretation.

### 1. Criminal Cases

Justice Jackson’s use of the common law tradition when interpreting statutes is clearly illustrated in cases where the Court is interpreting the meaning of penal statutes. This makes sense for three reasons. First, the criminal law is dripping in background common law context. This is so because many criminal statutes were simply the codification of common law crimes. While the entire body of common law was not codified, Jackson took it that traditional common law defenses, requirements, and meanings were still relevant for interpretative purposes. Second,

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80 *Id.* at 35.

81 Pojanowski, *supra* note 2, at 1419.

82 Krygier, *supra* note 75, at 35.

criminal statutes effect ordinary people in their daily lives. As referenced previously, Jackson was extremely careful to preserve the reliance interests of the ordinary person. This meant that, when interpreting statutes, Jackson was mindful to ensure that legislators and the courts could not step on the toes of traditional common law protections without explicit statutory authority. Third, and finally, the existence of a tradition can serve as objective criteria upon which a judge can base his or her decisions. In that sense, a judge is not free to act based on idiosyncratic policy values; rather, he or she is constrained by both the text and what the common law tradition would allow. The three cases examined below demonstrate these points well.

*a. Morissette v. United States*

Jackson's opinion writing for the majority in *Morissette v. United States* is probably the best example of his implementation of the common law tradition when interpreting statutes. There the defendant, Morissette, had salvaged three tons of spent bombshell casings from an Air Force practice bombing range.<sup>83</sup> He was subsequently convicted under 18 U.S.C. § 641, which provides "whoever embezzles, steals, purloins, or knowingly converts' government property is punishable by fine and imprisonment."<sup>84</sup> Morissette, however, maintained throughout the investigation and trial that he thought the casings were abandoned, and that he did not intend to take the property with any wrongful or criminal purpose.<sup>85</sup> The trial and appellate courts found Morissette's lack of criminal intent irrelevant. They held that his conviction was required under the statute since Congress had failed to include in the offense an element of criminal intent.<sup>86</sup> Jackson disagreed with the lower court's decision to read into the statute the "ancient" requirement of criminal intent.<sup>87</sup> In explaining what could be argued to be a departure from his typical textual approach, Jackson wrote:

[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them . . . . [N]or has our attention been directed to, any instance in which Congress has expressly eliminated the mental element from a crime taken over from the common law.<sup>88</sup>

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83 *Morissette v. United States*, 342 U.S. 246, 247–48 (1952).

84 *Id.* at 248.

85 *Id.* at 248–49.

86 *Id.* at 250.

87 *Id.* at 250, 263.

88 *Id.* at 263, 265.



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According to Jackson, because Section 641 served to codify a common law crime, Congress was presumed to have adopted the traditional background principles associated with the crime. One of those principles was the common law requirement of criminal intent. This imputation on Congress is an important constraint on the courts, since it restrains them from enlarging “the reach of enacted crimes.”<sup>89</sup> Further, Jackson expressed an unwillingness to disrupt coordination benefits by simply throwing away a deeply-held and widely-accepted ancient tradition that ordinary citizens had relied on.<sup>90</sup> Jackson’s description of *Morrisette* is illustrative:

Morrisette, by occupation, is a fruit stand operator in summer and a trucker and scrap iron collector in winter. An honorably discharged veteran of World War II, he enjoys a good name among his neighbors and has had no blemish on his record more disreputable than a conviction for reckless driving . . . Morrisette voluntarily, promptly and candidly told the whole story to the authorities, saying that he had no intention of stealing but thought the property was abandoned, unwanted and considered of no value to the Government.<sup>91</sup>

To Jackson, *Morrisette* was exactly the type of person that the common law requirement of criminal intent had traditionally served to protect. He was a person who relied on the idea that a person couldn’t be thrown in jail for a crime he had no intent on committing. Accordingly, Jackson issued a holding that preserved the coordination benefits for ordinary people like *Morrisette*. The employment of the traditional approach also constrained the judge from making a policy choice. Because traditions are long-held, and they develop over time, they serve as objective criteria on which the judge can base his decision-making. In this way, when a judge reads a statute in light of its background common law principles, he or she does not substitute their own views for those of the legislators. Rather, the tradition exists, whether the judge likes it or not. Jackson’s opinion in *Morrisette* serves as an important illustration of his use of the traditional common law when interpreting statutes. Further, this traditional approach remains consistent with his underlying theory of statutory interpretation.

b. *United States v. Five Gambling Devices*

*United States v. Five Gambling Devices* also serves as an example of Jackson’s use of a traditional approach to statutory interpretation. At issue there was the Department of Justice’s interpretation of the Act of January 2, 1951.<sup>92</sup> The Act required manufacturers and dealers of gambling devices annually to register their business and name, and to file detailed information as to each device sold and delivered during the preceding month. The Act further prohibited the transportation

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89 *Id.* at 263.

90 *Id.* at 265.

91 *Id.* at 247–48.

92 *See United States v. Five Gambling Devices, Etc.*, 346 U.S. 441, 442 (1953).

of gambling devices in interstate commerce.<sup>93</sup> The question before the Court was whether the Act was enforceable as against all dealers and transactions, irrespective of whether the machines traveled in interstate commerce.<sup>94</sup> The Department of Justice, interpreting the language of the statute literally, argued that it did.<sup>95</sup> Jackson, writing for a majority of the Court, disagreed. He did acknowledge that the “literal language of [the] Act is capable of the broad, unlimited construction urged by the Government,” and noted that, “if it were enacted for a unitary system of government, no other construction would be appropriate.”<sup>96</sup> But, as Jackson maintained, we do not have a unitary system of government. Rather, when interpreting statutes, the Court does so “against the background of our tradition and system of government. . . .”<sup>97</sup> Jackson held that, because there was a “long tradition and sound reasons which admonish against enlargement of criminal statutes by interpretation,” the “Act [did] not have the explicitness necessary” for the Court to find that it prohibited purely intrastate conduct.<sup>98</sup> Here, Jackson again relied on the long-held tradition against judicial enlargement of criminal statutes—thus ensuring that lawyers, citizens, and judges, who relied on the tradition of narrowly interpreting criminal statutes, were entitled to do so. Jackson held that such reliance interests should not be disturbed, absent a clear congressional expression.<sup>99</sup>

*c. Musser v. Utah*

Jackson expressed a similar desire to preserve reliance interests—and again, resorted to a traditional common law interpretation—in *Musser v. Utah*.<sup>100</sup> There, the Court was tasked with interpreting a Utah statute that penalized “acts injurious to public morals.” Jackson, writing for a plurality of the Court noted at the outset that “[i]t is obvious that this is no narrowly drawn statute.”<sup>101</sup> He continued, stating that, “[s]tanding by itself, it would seem to be warrant for conviction for agreement to do almost any act which a judge and jury might find at the moment contrary to his or its notions of what was good for health, morals, trade, commerce, justice or order.”<sup>102</sup> Jackson, expressing similar concerns to those voiced in *Morissette*, stated that, “[l]egislation may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused.”<sup>103</sup> Jackson ultimately remanded the case so that the Utah Supreme Court could offer its interpretation of the statute.<sup>104</sup> But, he conceded that the plain

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93 *Id.* at 442–43.

94 *See id.* at 444–45.

95 *Id.* at 445.

96 *Id.* at 449–50.

97 *Id.* at 450.

98 *Id.* at 449, 452.

99 *Id.* at 451–52.

100 *See Musser v. Utah*, 333 U.S. 95 (1948).

101 *Id.* at 96.

102 *Id.* at 97.

103 *Id.*

104 *Id.* at 98.

language of the statute would likely fail to offer the guidance that is traditionally required of statutes. This lack of guidance, in turn, would disturb the reliance interests of the ordinary “law-abiding” citizens. According to Jackson, the purpose of the common law tradition was to protect those reliance interests, and accordingly, this tradition also restrained judicial discretion. As Jackson noted, statutes not conforming to the traditional requirements of notice afford judges the discretion to essentially create crimes, allowing them to make policy decisions constitutionally-delegated to legislatures. According to Jackson, the tradition of requiring “reasonable standards of guilt” solves this problem. In this way, Jackson’s use of common law tradition while interpreting statutes both constrained judicial decision-making and preserved reliance interests.

*Morissette*, *Gambling Devices*, and *Musser* all evince Justice Jackson’s willingness to draw on traditional common law principles in cases of statutory interpretation. The common law method of statutory interpretation is undoubtedly consistent with Jackson’s overall theory of statutory interpretation, but it should be noted that it does afford judges greater discretion. Using the common law method, judges are not totally constrained by text. Judges could, in turn, use this discretion to further their own policy goals—potentially wielding traditions arbitrarily or finding traditions where there are none in furtherance of their own interests. It appears that this is a risk that Jackson was willing to take. According to Jackson, in some circumstances the traditions of the people should take precedence over the values of a text-only approach. Jackson’s employment of the common law tradition might evince his own willingness to prioritize the reliance interests of the people above his asserted desire to restrain judges.

## II. WAS JACKSON A FRAUD?

After reading the arguments above, one might conclude that the work is done; that in cases of statutory interpretation, Jackson adopted methods that restrained judicial discretion and preserved coordination benefits for the ordinary person. Well, nothing is that simple. And in some cases, what Jackson has said diverges from what he did. In light of this evidence, one might be inclined to call Jackson a fraud.

### A. Legislative History

Part II of this paper discussed several examples of Justice Jackson’s textualism. Jackson claimed that judges occupy a limited role. In several of the opinions discussed above, Jackson adopted a textual approach to interpretation. In those opinions, he asserted that judges were to be constrained both by constitutional mandate, institutional capacity, and by the reliance interests of the common man. Additionally, he especially distanced himself from the use of legislative history. Condemning the Supreme Court’s predisposition to rely on legislative history and intent, Jackson wrote:

I am coming to think it is a badly overdone practice, of dubious help to true interpretation and one which poses serious practical problems . . . .

[T]he most unfortunate consequence of resort to legislative history is that it introduces the policy controversies that generated the Act into the deliberations of the Court . . . . [The Act] . . . is no longer a safe basis on which a lawyer may advise his client.<sup>105</sup>

He echoed similar concerns in several of the opinions described above. However, despite what he wrote in those opinions, and what he said in a speech to the American Bar Association, Jackson occasionally did rely on legislative history when interpreting statutes.<sup>106</sup> Reading these opinions, one might reasonably conclude that Jackson was “all talk.” That is certainly one possibility. Another possibility is that Jackson was reluctant to use legislative history, but did so in limited circumstances. This final part of this essay examines the circumstances under which Justice Jackson did resort to legislative history when interpreting statutes.

### 1. Under What Circumstances?

In several writings where Jackson criticized the use of legislative history, he did save for exception the use of committee reports. In *Schwegmann Bros.*, Jackson wrote, “[r]esort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond Committee reports, which presumably are well considered and carefully prepared.”<sup>107</sup> In other words, Jackson considered committee reports valuable because they served as objective evidence of what at least some legislators thought enacted text meant. Rather than ascertaining meaning by inference based on testimony and other forms of legislative history, the use of some “committee reports . . . may be based on the idea that some key members have the right to speak for the entire legislature.”<sup>108</sup> Evidence of Jackson’s use of committee reports as a last resort, where the plain language is “inescapably ambiguous,” is clearly illustrated in *Corn Exchange National Bank & Trust Co. v. Klauder*. There, Justice Jackson relied heavily on the report by the House Judiciary Committee when determining whether loans made on assignments of accounts receivables were subject to the preferential transfer provisions of Section 60(a) of the Bankruptcy Act, as amended, 1 U.S.C. § 96(a).<sup>109</sup> Similarly, Jackson relied on a report from the Senate Committee on Education and Labor in his dissenting opinion in *Jewell Ridge*.<sup>110</sup> In those cases Jackson kept his promise to an extent, only using committee reports as a last resort. But, as demonstrated below, Jackson did resort to use other forms of legislative history when he deemed it necessary.

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<sup>105</sup> Jackson, *supra* note 13, at 537–38.

<sup>106</sup> See *United States v. Universal C. I. T. Credit Corp.*, 344 U.S. 218, 222–24 (1952); *Massachusetts v. United States*, 333 U.S. 611 (1948); *United States v. Five Gambling Devices, Etc.*, 346 U.S. 441, 450–52 (1953).

<sup>107</sup> *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395 (1951) (Jackson, J., concurring).

<sup>108</sup> Quintin Johnstone, *An Evaluation of the Rules of Statutory Interpretation*, 3 KAN. L. REV. 1, 14 (1954).

<sup>109</sup> See *Corn Exch. Nat’l Bank & Tr., Phila. v. Klauder*, 318 U.S. 434, 438–39 (1943) (“The Committee of the House of Representatives which reported § 60(a) . . . was fully aware of the vicissitudes of its predecessors . . . . Against such a background § 60(a) was drawn and reported to Congress . . .”).

<sup>110</sup> *Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of America*, 325 U.S. 161, 176 (1945).

In fact, where committee reports were not good enough, Justice Jackson was not afraid to use whatever materials of legislative history he could find when interpreting statutes. Jackson's dissent in *Jewell Ridge* illustrates this point perfectly.<sup>111</sup> In that case, Jackson dissented from the majority's holding that the time that employees spent traveling underground between the portals of the employer's two bituminous coal mines was included in the compensable workweek under Section 7 of the Fair Labor Standards Act.<sup>112</sup> While Jackson initially relied on the report from the Senate Committee on Education and Labor, he concluded that "[t]he debates on the bill appear to us to make [Congress'] intention more explicit."<sup>113</sup> He then went on to extensively reference the debates in the Congressional Record to support his argument that Congress did not intend the Fair Labor Standards Act to interfere with collectively bargained agreements.<sup>114</sup> *Jewell Ridge* serves as proof positive that Jackson's use of legislative history was not limited to committee reports alone.<sup>115</sup>

a. *United States v. Congress of Industrial Organizations*

Probably the most salient example of Jackson's divergence from the text can be found in *United States v. Congress of Industrial Organizations*. There, the Court was tasked with determining whether a labor organization's publishing of a weekly periodical, which endorsed a candidate for judicial office, violated Section 313 of the Federal Corrupt Practices Act.<sup>116</sup> Writing for the majority, Justice Reed held that Section 313 did not prohibit the defendant's conduct.<sup>117</sup> Interpreting the statute, Reed wrote that:

The purpose of Congress is a dominant factor in determining meaning. There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged. Remedial laws are to be interpreted in the light of previous experience and prior enactments. Nor, where doubt exists, should we disregard informed congressional discussion . . . . This legislation seems to have been motivated by two considerations. First, the necessity for destroying the influence over elections which corporations exercised through financial contribution. Second, the feeling that corporate officials had no moral right to use

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<sup>111</sup> See generally *id.* at 170–196.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 176.

<sup>114</sup> See *id.* at 170–71 (“[L]egislative history gives convincing indications that Congress did not intend the Fair Labor Standards Act . . . to interfere with [collectively bargained agreements] . . .”).

<sup>115</sup> See *City of New York v. Saper*, 336 U.S. 328, 338–39 (1949) (dismissing the value of a House Committee Report since it was not specifically acted upon by Senate).

<sup>116</sup> *United States v. Cong. of Indus. Orgs.*, 335 U.S. 106, 110 (1948) (The statute, in relevant part, prohibits “expenditure . . . in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . .”).

<sup>117</sup> *Id.* at 124.

corporate funds for contribution to political parties without the consent of stockholders.<sup>118</sup>

In *Congress of Industrial Organizations*, Justice Reed expressly adopted the position that congressional purpose is a dominant factor in determining the meaning of legislation. Further, Reed used the ambit of legislative materials, from the history behind enactment to testimony and debate before Congress during enactment, in order to ascertain the meaning of the statute; all this before arriving at a determination as to what “motivated” the legislators to act. Note that this is seemingly in opposition to everything Jackson said in his decisions adopting plain meaning rules.<sup>119</sup> But that is exactly what the Court did in *Congress of Industrial Organizations*, and Jackson acquiesced without so much as a peep.<sup>120</sup> In doing so he repudiated the coordination benefits associated with a determinate method of interpreting statutes, and involved the Court in the political debates originally taken up by the legislature.

Jackson’s decisions endorsing the use of legislative history when interpreting statutes do seem to point in the direction of hypocrisy. While condemning its use in numerous cases, he resorted to legislative history when it was convenient. However, calling Jackson an outright fraud is probably an unfair characterization. A judge joining in a majority opinion does not necessarily join every word, and every strain of reasoning, employed in the opinion. Jackson could have joined for a multitude of reasons. Just because he agreed in the outcome, does not necessarily mean that he agreed with the method of statutory interpretation employed. That being said, Jackson’s dissent in *Jewell Ridge* is more problematic since he endorsed the use of legislative history outright.

It is important to remember, though, that while Jackson’s opinions in *Corn Exchange National Bank & Trust Co.*, *Jewell Ridge*, and *Congress of Industrial Organization* do endorse the use of legislative history, they stand as outliers. If this Note does anything, it should demonstrate that the tool Jackson most often used was the text of the statute itself. In Jackson’s textualism opinions, he explicitly made clear his desire to restrain judges and preserve the reliance interests of those governed by statutes. It would be disingenuous, and methodologically unsound, to simply disregard the vast majority of what Jackson wrote and said. Still, Jackson’s deviation is noteworthy and deserves an explanation. Jackson himself certainly gives no explanation for deviating from the text of the statute and the background common law. Jackson’s divergence appears inexplicable. He uses legislative history, which he utterly disavowed in several opinions, and goes on his way as if nothing out of the ordinary has happened. This paper cannot explain why Jackson diverged in that way that he did; suffice it to say that in the individual cases when Jackson did use legislative history, it appears to be because he valued the correct individual outcome

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118 *Id.* at 112–13.

119 *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 395–96 (1951) (Jackson, J., concurring). (The most unfortunate consequence of resort to legislative history is that it introduces the policy controversies that generated the Act into the deliberations of the court).

120 *See generally Cong. of Indus. Orgs.*, 335 U.S. at 110–14.

in the case at hand above his desire to restrain judges and preserve coordination benefits.

### III. CONCLUSION

In sum, Justice Robert Jackson's general theory of judging sought to constrain judicial discretion. Jackson believed that judges were not meant to serve as policy makers. Jackson's application of this theory remained consistent in his cases interpreting statutes. When interpreting statutes, Justice Jackson primarily sought to constrain judicial discretion from departures from the enacted text, and preserve the reliance interests of those whom the statute governed. Jackson effectuated these principles through his use of a textual plain meaning method, and through the traditional common law method of statutory interpretation.

Jackson's use of a textual approach was without question the most common. The textual approach is consistent with Jackson's theory of statutory interpretation, since plain meaning serves as common ground while simultaneously acting as a constraint on judging. As Jackson demonstrated in his opinions, the plain meaning of words serve as an objective criterion. Instead of resorting to legislative testimony, which can often be used to advocate for a variety of meanings, a judge can constrain himself from making a policy choice between plausible meanings based on legislative testimony by using the objective criterion that is the plain and ordinary meaning of the statutory text. Jackson's employment of the textual approach served as an effective means for interpreting statutes in light of his underlying judicial values.

Jackson did not use plain meaning all the way down, however. Instead, when confronted with so-called "hard cases," Jackson would often rely on a traditional approach to statutory interpretation. That is, Jackson would often rely on the persistence of a background, unwritten common law tradition. The traditional approach also "constrain[s] both what is written and what is taken to have been meant by what is written."<sup>121</sup> Tradition, like plain meaning serves as an objective criterion on which to base a decision. Further, where a tradition exists, there are already background coordination benefits associated with applying that tradition—i.e., ordinary people operate on the assumption that certain traditions remain in place and coordinate their conduct accordingly. Interpreting a statute to the contrary would rupture the reliance interests of those who have coordinated their conduct in compliance with background traditions. Jackson's employment of the traditional common law method served as an effective means for interpreting statutes in light of his underlying judicial values.

While Jackson did at times rely on legislative history, those cases were outliers. In the majority of cases of statutory interpretation, Jackson did, in fact, employ the traditional and plain meaning methodologies of interpretation. His use of these methods, in turn, was guided by his desire to constrain judging and to preserve the coordination benefits of those interpreting legislation on the ground. Jackson, a man who himself rose from humble beginnings among the common folk, seemingly always kept their interests front and center.

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<sup>121</sup> Krygier, *supra* note 75, at 35.