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ON REGULATORY VARIABLES

REGULATORY VARIABLES AND STATUTORY INTERPRETATION

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H.L.A. Hart's classic hypothetical posited a statute providing, "No vehicles are allowed in the park."[1] Hart then posed situations arising under the statute: Would a police officer be compelled to arrest a mother who brought a baby carriage into the park? The driver of an ambulance? Kids on bicycles? The hypothetical applications are challenging, because they set the apparent plain meaning of the statute against sensible results. Surely an ambulance is a "vehicle," but just as surely it should sometimes be allowed in the park, yes?

No issue discussed at the Conference on Law and Linguistics better revealed the different intellectual approaches of the law professors and the linguistic professors, than the Vehicles in the Park hypothetical. In the course of our small group discussion, we came up with the concept of *regulatory variable* as a means of bridging the intellectual gap between the disciplines. In this Essay, we shall use the hypothetical as the means to describe the intellectual puzzle that separates the two disciplines, specify and develop our idea of words or phrases as "regulatory variables," and suggest larger implications of our concept.

I. VEHICLES IN THE PARK: LAW VERSUS LINGUISTICS

Consider three hypothetical applications of the *No vehicles in the park* law:

(1) A child rides her *tricycle* into the park.
(2) A health care team drives their *ambulance* into the park to rescue a person who has just had a heart attack.

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1. H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593 (1958).

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(3) A teenager rides his *bicycle* into the park along a bike path which a statute subsequent to the *No vehicles in the park* law has designated as a bike-riding route within the park.

Does the *No vehicles in the park* statute prohibit these variations? The two groups of scholars approached these hypotheticals from different angles.

Although all were willing to say that none of the hypothetical perpetrators should be arrested, the linguists and the lawyers differed sharply in their accounts of just why no arrests should occur in those instances. The linguists insisted that because the *language* of the statute remained constant, the *interpretation* of that language must remain constant.[2] Because the language prohibited all vehicles, then tricycles, bicycles, and ambulances were indeed prohibited (assuming that all three belong to the category named by the noun *vehicle*)—by the plain language of the statute.

In contrast, most of the lawyers tended to believe that ambulances on emergency missions, for example, would not be vehicles for the purpose of the statute; they thought that the meaning of the statute changed as circumstances changed. The idea that "the meaning of the statute" could shift in this way from moment to moment was unacceptable to the linguists, and the linguists' insistence on a more static concept of the plain meaning of the statute was just as questionable to the lawyers. What was the source of this intellectual divide?[3]

Not surprisingly, the linguists focused their attention on the domain central to their training and interests, posing the inquiry as, "What is the meaning of the statutory *language*?" Under conventional semantics, does the category designated by the word *vehicle* include (1) tricycle[s], (2) ambulance[s], or (3) bicycle[s]? The linguists at the conference viewed this part of the inquiry as amenable to empirical research. The linguistic researcher examines evidence for conventional meaning to determine

2. Much of the difficulty in this discussion and throughout the conference was that the two sets of participants were trying to communicate by using the troublesome yet crucial words *meaning* and *interpretation* before they had fully identified the different frameworks that gave each term different significance to each profession. On this subject, see Michael L. Geis, *The Meaning of "Meaning" in Law*, 73 WASH. U. L.Q. 1125 (1995); Peter M. Tiersma, *The Ambiguity of Interpretation: Distinguishing Interpretation from Construction*, 73 WASH. U. L.Q. 1095 (1995).

3. This phenomenon and the discussion that followed was generally replicated when the linguists and lawyers discussed the Supreme Court's opinion in United States v. X-Citement Video, Inc., 115 S. Ct. 464 (1994). For discussion of *X-Citement Video*, see Craig Hoffman, *When World Views Collide: Linguistic Theory Meets Legal Semantics in* United States v. X-citement Video, Inc., 73 WASH. U. L.Q. 1217 (1995); and Jeffrey P. Kaplan & Georgia M. Green, *Grammar and Inferences of Rationality in Interpreting the Child Pornography Statute*, 73 WASH. U. L.Q. 1225 (1995).

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whether an ordinary speaker of English would believe that the general category "vehicle" includes within it the more specific items (1) tricycle, (2) ambulance, and (3) bicycle.

The easiest case for the linguists was (2): the proposition that an ambulance is a vehicle can be established by reference to several different sources of evidence for conventional meaning.[4] Cases (1) and (3) are not so easy, as bikes and trikes are somewhat less typical of the category of vehicles than ambulances. Still, the linguist's methodology would be the same, that is, neutral and empirical investigation.

Equally unsurprising was that the lawyers saw the central inquiry as one of the statute's *application*. While they also asked what the plain meaning of the statute was, that issue was only one part of a more extended inquiry, "How should this statute be applied?" Should a statute that says, "No vehicles are allowed in the park," be applied to prohibit an ambulance from driving into the park to rescue a heart attack victim? Even if the plain *meaning* of the statute is that ambulances are included within its scope because they are vehicles, the statute should not be *applied* to include the ambulance under the circumstances described by the hypothetical. Thus, the lawyers' approach overlapped with that of the linguists, but permitted the circumstances of the hypothetical to take them beyond it.

Once it became clear that the answer to the hypothetical was being sought along at least two different dimensions—that of language and that of application—consensus seemed possible. The linguists were engaged only in a *descriptive* or *positive* enterprise of ascertaining the conventional meaning of the statute. They were perfectly willing to present to the lawyers their findings as to the language facts, understanding that the latter might choose to disregard the conventional meaning of the statutory language because it violated a *prescriptive* or *normative* canon of legal application. Some of the lawyers were equally happy to bifurcate the enterprise: linguists would provide expert guidance on whether there is a scientifically ascertainable plain meaning to the statute, but lawyers and

4. While one source of such evidence is informed introspection, linguists who study word meaning find it essential to transcend the limits of introspection by first assembling a larger set of data than introspection could provide. This can be done by computer-assisted searches of a large "language corpus" to find many examples of how the word in question is used in naturally occurring language. Their analysis can be extended further by questionnaire-surveys of speakers of the language. *See* Clark D. Cunningham et al., *Plain Meaning and Hard Cases*, 103 YALE L.J. 1561, 1588-1613 (1994) (discussing meaning of *enterprise* for purposes of RICO). Nonetheless, informed introspection still plays an essential role in interpreting the data garnered in a computer search and in generating effective questions for a survey of native speakers.

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judges could invoke normative trumps to override plain meaning. Such bifurcation is consonant with the methodology courts usually announce for interpreting such statutes: the plain meaning controls, unless it is trumped by the absurdity of its result, a constitutional concern, or clear legislative intent to the contrary.

One of us (Eskridge) objected to this budding consensus. Can we separate the descriptive from the prescriptive so cleanly? Where sentences have legal consequences, as statutes do, should we consider meaning without considering consequences?[5] Are there not principles of linguistics—most likely, within pragmatics—that might unsettle the ready belief that *vehicle* means (1) tricycle, (2) ambulance, and (3) bicycle, at least under the circumstances of the hypotheticals?

These questions stimulated a conversation that generated the concept of regulatory variables.

II. REGULATORY VARIABLES, REGULATORY VARIABILITY

Our initial concept was that statutory terms like *vehicles* or *no vehicles* are regulatory terms which, like other expressions in the language, have conventional meaning that can be identified by empirical research. However, while their *linguistic* meaning can thus be determined, their *legal* meaning varies with the statute's purpose, other public policies, and the degree of delegated discretion. Hence the term *regulatory variables.* There are three components to this initial concept. First, statutory terms are instrumental, serving regulatory purposes. Second, they are set in the context of other regulatory purposes in the regime of legal rules and principles. Third, embedded within the statutory enactment is an intent that agents carrying out the statute have some discretion; the degree of discretion is initially calibrated by the terms themselves but ultimately subject to later developments.[6]

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5. Addressing this issue is muddied again by use of the troublesome word *meaning*, whose multiplicity if not duplicity of senses was emphasized by Michael Geis during the Saturday session. His distinction between *language meaning* (or "L-meaning", as he put it) and *significance in law* (or "S-meaning") is highly useful. *See* Geis, *supra* note 2.

6. Our discussion of regulatory variables centered on nouns like *vehicles* and noun phrases like *no vehicles*, but other parts of speech can also be viewed as regulatory variables—especially when their meanings are extremely general, as we note *infra* Part II. Examples include the adjectives *reasonable* and *deliberate* in the phrases *reasonable care* and *deliberate speed*; and the verbs in phrases such as *possessing drugs*, *modifying a habitat*, and *agreeing to a contract.* For that matter, prepositions like *near* and *at*, and even the definite article *the*, are also subject to regulatory variability, as a glance at their entries in the legal reference work, *Words and Phrases*, will reveal. *See* California Trout v.

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When Levi coined the term *regulatory variable* in our small group discussion, it was in an attempt to clarify the different approaches to statutory language being taken by the linguists and the lawyers. Because the linguists' understanding of the process of semantic change leads them to reject the claim that the meaning of the statutory language changes every time the statute is applied (or, more specifically, that the meaning of the word *vehicle* changes every time an ambulance goes in or out of a park), Levi proposed a shift in perspective for heuristic purposes. She suggested that it might be useful to say instead that those applying the statute could choose to treat a particular statutory term *as if* it were a "regulatory variable," that is, as a term whose legal interpretation could vary as a function of changing circumstances. The heuristic *as if* is critical to this formulation.[7]

Legal interpreters are doing something different with statutory language than what linguists would describe as "interpreting the meaning of the language." Rather, or in addition, they are choosing to *vary the applicability of the statute* for nonlinguistic reasons. This activity is very different from what a linguist does to answer the question, "What is the conventional meaning of the language in this statute?" In emphasizing that legal interpreters can *choose* to vary the applicability of a statute (but cannot choose to make the meaning of the language itself vary quite so easily), we agree with Fred Schauer's conference observation that saying that a term "is" a regulatory variable may misleadingly "suggest a necessity, whether conceptual or empirical, rather than a choice by some identifiable human actor."[8]

For this reason, we have concluded that it is more felicitous to speak of "regulatory variability" than to speak of "regulatory variables."[9] And that

Schaefer, 1995 U.S. Dist. LEXIS 15704, at *1 (9th Cir. June 26, 1995) (discussing the meaning of "modifying" a habitat).

7. This is not critical for the other author (Eskridge). In his opinion, meaning itself (especially in the sense of 'legal significance,' but also in its sense of 'conventional meaning') is highly variable, especially over the long periods of time that statutes often last. Levi can hardly disagree with this observation, but notes that the discussion inspiring the term *regulatory variables* did *not* involve historical change in conventional meaning; it was change in meaning-as-legal-significance alone for which the term was coined.

8. *Law and Linguistics Conference*, 73 WASH. U. L.Q. 944 (1995) (statement by Fred Schauer). *See also id.* at 846-47 (comments by Fred Schauer).

9. Although still heuristically useful, referring to specific words or phrases as *regulatory variables* may give two other misleading impressions: one, that "regulatory variables" are entities that exist as surely as the words and phrases of the statute do; and two, that we can tell (prospectively or retrospectively) just which words and phrases of a statute "are" regulatory variables and which are not.

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"regulatory variability" is itself short for "the variability in *applicability* of a statute, for regulatory purposes." We now develop this concept of "regulatory variability" and illustrate it by reference to our *No vehicles in the park* hypotheticals.

1. *Applicability of Statutory Language Varies with Regulatory Purpose.* Human communication is instrumental, or purposive. The goal of communication might be to express our feelings or to delight the other person. Frequently the goal is to influence the other person's conduct. Statutes are special communications of the latter sort. They are commands issued under the aegis of the state's force as a background incentive for people to do as the statute says. The state usually does not issue commands idly. Behind the command is a policy or principle or cluster of policies and principles.[10]

Hence we say that statutory language is *regulatory*: it seeks to regulate human conduct in a way that serves public goals. When legal agents interpret statutes, their inquiry into statutory meaning (in the broader sense of 'legal significance') should be ascertained by reference to those purposes and, preferably, should be understood consistent with them.[11]

Linguists are no strangers to this idea.[12] The meaning (either intended or inferred) of words or phrases used in ordinary conversation will often depend upon the goal(s) of the interlocutor. As a result, how accurately we interpret someone else's words will often depend on how accurately we infer those goals. If I say, "Oh, go away," and it is apparent that I am joshing with you, I am not using the words, *Oh, go away*, with their usual conventional meaning that I want you to depart. Instead, I intend for you to recognize the teasing quality of my utterance, as conveyed by intonation and facial expression, and supported by mutual knowledge of our relationship. In contrast, if you are a pesky sales agent bugging me at my house and I petulantly say, "Oh, go away," I do mean for you to get the

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10. *See generally* HENRY M. HART, JR. & ALBERT M. SACKS, THE LEGAL PROCESS 1-181 (William N. Eskridge, Jr. & Philip P. Frickey eds., 1994).

11. This normative statement represents the view of Eskridge. Levi, as a linguist, recognizes that authorial intention is always relevant to interpreting language, but takes no position on what weight should be given to such inferred intentions vis-a-vis the many other possible considerations in legal interpretation. She does note, however, that assigning heavier weight to authorial intentions than to authorial language may have the regrettable effect of providing a disincentive to better and more thoughtful drafting. Like the other linguists, she wonders why legislators should be held to a lower standard of writing than that to which we professors hold our students.

12. *See* GEORGIA M. GREEN, PRAGMATICS AND NATURAL LANGUAGE UNDERSTANDING 13-15 (1989).

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hell out, and my intonation will in this case reinforce rather than undo the conventional meaning of the words themselves. The same sentence, then, will be interpreted differently each time it is uttered (hence, the value of the linguistic distinction between *sentence* and *utterance*), depending upon the parameters of the specific context, including the speaker's purpose in particular.

The question of whether a tricycle is a vehicle in the statutory sentence, *No vehicles are allowed in the park*, cannot be answered independently of the context of the inquiry. If you ask a linguist, who has determined that tricycles are indeed members of the category denoted by the noun *vehicle*, the answer will simply be "Yes"—because the linguist will be focusing on the conventional meaning of the language alone. On the other hand, if you ask a lawyer or an official charged with enforcing the statute or even a citizen charged with obeying it, the response will certainly be more complicated. These latter interpreters will consider not only the conventional language meaning, but also such questions as, "What is the purpose of the statute?" If the law was a response to injuries to pedestrians from motorcycles racing through the park, it makes less sense to treat the statute as excluding tricycles from the park, even though in other conversational contexts people may speak of a tricycle as a vehicle.[13]

The analysis is different if the *No vehicles in the park* law was animated by a different safety concern, namely, the safety of people riding in or on vehicles. If the law was a response to injuries to bicycle riders running into one another, it makes somewhat more sense to read the statute as excluding tricycles from the park.[14]

2. *Applicability of Statutory Language Varies with Other Policies and Purposes*. Assume that the purpose of the *No vehicles in the park* statute is the protection of pedestrians from physical injury, and assume that this purpose will guide the legal application of the statute. Under these assumptions, Hypothetical (1) (tricycles) would probably not be embraced

13. We put the matter differently in earlier exchanges. The lawyer (Eskridge) tends to view the inquiry as, "Does *vehicle* include tricycles in the policy context of this statute?" The meaning of the statutory term *vehicle* itself is variable. The linguist (Levi) tends to describe the inquiry in different words, such as, "Even though the category denoted by the word *vehicle* may include tricycles in ordinary language use, in the context of the purpose behind this statute, it may not make *legal* sense to treat the statute as excluding tricycles from the park." This is another instance where our different uses of the words *meaning* and *interpretation* influence our discussions of language, even when those two words themselves do not appear.

14. We ignore for present purposes the complicating possibility that tricycle riders are typically better supervised than bicycle riders.

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within the statutory purpose, Hypothetical (2) (ambulance) would seem clearly embraced, and Hypothetical (3) (bicycles) would also probably be included. These conclusions are too hasty, however.

The meaning of human communication depends not just on the purpose of the particular utterance, but also on other purposes and precepts assumed by or accompanying the utterance. Suppose that I am angry with a public figure and tell you, "Let's get rid of him!" My exhortation does not mean that I think that you should attack or kidnap the person, even though this would be one possible way to interpret the meaning of the statement in a way that is consistent with my general purpose. Instead, your interpretation of the meaning of my utterance must be informed by more general assumptions that you and I share, including the presumption that I do not intend for either of us to break the law or do another person physical harm.

Likewise, a decision concerning how to apply or interpret regulatory terms such as *vehicle* or *no vehicles* will vary not only with statutory purpose, but also with other goals and policies of the overall regulatory regime. The term *no vehicles* can be taken to mean "no ambulances" under normal circumstances, but not in an emergency, when driving the ambulance through the park is necessary to save someone's life. Notwithstanding the danger posed by the ambulance to pedestrians in the park (whose protection is the purpose of the statute), a reasonable person with interpretive authority could maintain that the statute's meaning allows the ambulance in such emergency.

Hypothetical (3) is slightly different, because a second, later-enacted statute has created a bicycle path in the park. It is still true that bicycles can plausibly be included within the category of *vehicle* and within the statutory purpose, and it is apparent that there is no "exigent circumstance" that would justify an exception for bicycles such as the one created for an ambulance saving someone's life. Nonetheless, the interpretation of the language of the original statute in the context of the city's entire regulatory regime must now reflect the newer law which designates a part of the park as a bike path. The two laws might at first blush appear to have inconsistent meanings: one prohibits bicycles from the park, while the other makes a legitimate place for them (both physically and legally). The laws can be reconciled, however, by narrowing the earlier, more general one in light of the later, more targeted one.

3. *Applicability of Statutory Language Varies with Delegated Discretion.* The applicability of the statutory term *vehicle* or *no vehicles* proves to be highly variable, not only because it is embedded in a regulatory regime, but for other reasons as well. Unlike most other

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communicative utterances, statutes are addressed to a large and heterogeneous audience. That audience includes administrators, who are typically the initial audience for the statute, but the audience also includes the citizenry. Because statutes are directive in nature and infinite in duration (usually), their intended audience also includes future administrators and citizens. The heterogeneity of the intended audience, the indefinite duration of the communication's effects, and the key role played by administrators (other state officials) suggest the importance of discretion—an administrative law term for regulatory variability—in the statute's implementation over time.

The legislature has several mechanisms for calibrating the amount of discretion officials have, and the primary mechanism is the language of the statute. Human communication occurs at different levels of generality, and statutes are drafted with different degrees of interpretive discretion in mind. The generality of *No vehicles are allowed in the park* vests much greater interpretive discretion with agents than a more targeted statute like *No automotive vehicles are allowed in the park* or *No vehicles are allowed in the park, and here is what "vehicles" means for purposes of this statute:* * * *. The level of linguistic generality permits an inference about the speaker's willingness to delegate gap-filling discretion to another person (*i.e.*, police officers and judges). The more general the statutory term, the more discretion the directive is implicitly vesting in the implementing official.[15]

If the speaker were more confident or dogmatic—or even thoughtful—about how her command should be applied, she might be inclined to write a statute that is better specified. For example, the legislature might have used a more specific term, such as *automotive vehicle* rather than *vehicle.* Or the legislature might have included a provision defining more precisely what is meant by *vehicle*, or excluding items from the definition, or both. Or the statute could have been more open-textured, providing that, *No unauthorized dangerous things are allowed in the park.* That would be an intelligible command, but one vesting enormous discretion in the official delegated the power to say what is "unauthorized" and what is "dangerous." The choice of a relatively open-textured regulatory term such as *vehicle* thus increases the odds that a legal interpreter will be obliged to treat it as a "regulatory variable," because the language's generality does not meaningfully constrain its interpretation to a determinate set of category

15. Whether this discretion is vested deliberately or inadvertently is another question.

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III. IMPLICATIONS OF OUR CONCEPT

The concept of regulatory variability can help bridge the two disciplines of law and linguistics by exploiting a fuzzy edge that the disciplines share. Both disciplines seek regularized patterns in human communication and prize predictability. Yet both disciplines also recognize that meaning depends on context, although both hope that context is not infinitely elastic. Hence, our use of words and phrases is variable, in both legal and ordinary contexts. This is the "fuzzy edge" shared by our two disciplines.

Statutes are a form of communication that seeks to affect human conduct. Hence, the variability of statutory terms is regulatory. This regulatory variability is an important reason that the implementation of statutes evolves over time, but statutory evolution is neither unbounded nor completely unpredictable. Linguists and lawyers can cooperate in exploring the bounded predictability of statutory application.[16]

Even though the application of statutory terms is variable, their conventional meaning in ordinary conversation remains pertinent information. Almost all the major theorists of statutory interpretation, and all who are sitting judges, believe that the starting point for application is statutory text. An increasing number of theorists, the so-called "new textualists,"[17] believe that text should also be the stopping point in most cases. By providing a more rigorous methodology for ascertaining conventional plain meaning, linguists can contribute greatly to the new textualist enterprise.[18]

We think an equally useful contribution of linguistics is to provide theoretical bases for criticizing interpretive methodologies that deny the dynamicism of purposeful human communication and insist that statutory meaning and application are static over time. Our concept of regulatory variability supports a more subtle view of statutory interpretation as dynamic over time.

For Eskridge, the legislature's purpose or goal is central to the concept of regulatory variability. This suggests, strongly, that the expectations of the legislature are highly relevant to statutory meaning, especially in the

16. For an exemplar of such cooperation, in Eskridge's opinion, see Cunningham et al., *supra* note 4.

17. *See generally* William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621 (1990).

18. This observation should not be taken as an endorsement by any linguist or linguists of this enterprise. As noted earlier, linguists take no normative position qua linguists on deciding which factors should control, or dominate, the process of legal interpretation—not even language.

period right after the statute's enactment. In the large majority of cases, conventional plain meaning will be congruent with legislative expectations. Hence, evidence of the latter (legislative history) will usually be confirmatory rather than contradictory.[19]

When it is the latter, we agree that lawyers and linguists can cooperate in reconciling the evidence. Is there a semantic ambiguity that drafters missed the first time? Was the legislature operating under assumptions that have changed, or that were never the case? The concept of regulatory variability is fully consonant with the idea that statutory purpose, gleaned from legislative history, is an important consideration.

A final constraint on regulatory variability is practice. The methods by which linguists ascertain conventional usage of terms and phrases in ordinary conversation can of course be applied to the specialized conversations of law. If the legislature chooses a regulatory term that has a rich common law or regulatory history, that history is useful context for applying the term. If the legislature chooses a regulatory term that is then applied by administrators, judges, and citizens in a certain way, that subsequent practice is relevant to the term's evolving legal meaning. Lawyers already research practical usage along these lines, but rarely in the systematic way that linguists research conventional usage.

CONCLUSION

We began our inquiry into regulatory variability by coining the term *regulatory variables*. We then shifted our emphasis to the related notion of *regulatory variability* in order to emphasize the more dynamic, more fluid quality of the process whereby authorized legal agents make contingent, contextualized decisions about whether and where to apply the statute in which such terms are embedded.

Both concepts suggest several new lines of inquiry in connection with statutory interpretation. For example, when the legislature uses a highly variable term, such as *reasonable* or *all deliberate speed*, it might be deemed to say, "Here's a regulatory variable leaving open many options for future application. We can't, or don't want to, constrain officials applying this term of the statute." This in turn suggests how important is the allocation of institutional authority to apply statutes. Which officials should have the authority to fill in the details of regulatory variables? What

19. *See* United States v. Granderson, 114 S. Ct. 1259 (1994) (essentially adopting the analysis in Cunningham et al., *supra* note 4, at 1577-82).

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hierarchy of authority should they have? Under what circumstances should they be able to change their interpretation and adopt a new application of a particular regulatory variable?

Our twin concepts of *regulatory variables* and *regulatory variability* also permit us to ask new questions of linguistic interest. Although these terms were introduced to clarify the specifically legal process of statutory interpretation, a broader issue that needs to be addressed is whether "regulatory variability" is a phenomenon peculiar only to the legal context, or whether it represents a far more general phenomenon characteristic of all natural language understanding. During the conference, Michael Moore presented "ten possible ingredients to the theory of interpretation," dividing them into four which were based on his theory of communication (and thus presumably amenable to empirical research by linguists) and six that he characterized as "peculiar to law" (and thus presumably off limits, so to speak, to linguistic expertise), such as imaginative reconstruction, prior judicial interpretations, and various "tie-breaker" rules.[20] However, Levi later demonstrated that each of the latter six components has a counterpart within the kinds of pragmatic reasoning that ordinary people apply every day to interpret ordinary language, both spoken and written, in ordinary contexts.[21]

Thus, an intriguing direction for future research would be to explore in more detail whether *any* of the features of legal interpretation (including not only statutory interpretation but other domains as well, such as interpretation of constitutional and contractual language) is unique to the legal process, or whether a counterpart in our everyday pragmatic abilities can be found for each of these features. This question should be of great interest to legal scholars because a positive answer could point the way towards a greater integration of discoveries in pragmatics into our understanding of the nature of legal interpretation.[22] The question should be no less interesting to linguistic scholars, who will indeed be curious to see how well a set of pragmatic principles of communication originally

20. *Law and Linguistics Conference*, *supra* note 8, at 886-88 (statement by Michael Moore).

21. *Id.* at 896-97 (statement by Judith Levi). See also, Jerry Sadock's suggestion, that the process of legal interpretation which encompasses regulatory variability is "really just a special case" of the pragmatic competence shared and practiced by all language users "[t]o impute significance to an utterance that is different from the significance that derives solely in virtue of the words." *Id.* at C35.

22. For two relevant articles that have begun the comparative research effort, see Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, 1990 WIS. L. REV. 1179; and M. B. W. Sinclair, *Law and Language: The Role of Pragmatics in Statutory Interpretation*, 46 U. PITT. L. REV. 373 (1985).

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studied in far less technical contexts fit the specialized discourse and specialized settings of legal interpretation.[23]

We have developed the idea of regulatory variability to assist us in articulating the distinction between the process of determining the conventional meaning of statutory language, and the process of applying that language in particular circumstances. Understanding this distinction, in turn, permits us to identify where linguists can play a role in statutory interpretation. Their insights and empirical methodology are especially useful, and perhaps critical, to legal inquiries into a statute's plain meaning but are not determinative for legal assessment whether to apply a statute according to its plain meaning. Moreover, linguistic analysis can help lawyers distinguish more sharply between interpretive judgments derived from rigorous observations of conventional meaning, and those derived from normative regulatory concerns. We believe this contribution would make for better law, because it would render officials' normative and regulatory choices more transparent to the legislature that enacts the operative statutory language and to the citizens who must obey it.

23. *See* Georgia M. Green, *The Universality of Gricean Interpretation*, *in* PROCEEDINGS OF THE SIXTEENTH ANNUAL MEETING OF THE BERKELEY LINGUISTICS SOCIETY 411-428 (1990) (arguing that Grice's Cooperative Principle should be broadly applicable to the interpretation of language, well beyond the genre of "conversation").

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