MEDIA PARATEXT AND CONSTITUTIONAL INTERPRETATION

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ABSTRACT

In the fields of media studies and fan studies, the concept of paratext is an analytical paradigm for understanding how audiences consume and interpret media texts, such as a novel or movie. Amid today's media-rich society, it is all but impossible to encounter a media text in isolation. Rather, we also invariably interact with a wide variety of associated paratexts, from official materials like trailers or marketing to unofficial materials like reviews or fan reactions, which play a role in shaping our interpretation of the core media text. This concept of media paratext provides a compelling analogy for constitutional interpretation. We likewise do not interpret the U.S. Constitution in isolation, but always in association with related texts that inform our understanding of its meaning, such as legal precedent, historical materials, and scholarly work in relevant disciplines. Moreover, in both instances the determination of the meaning of the core text readily can be a contestable and contested endeavor. Ultimately, the comparison between constitutional interpretation and media paratext refutes the proffered objective of originalism by demonstrating the impossibility of any aspiration to sever the interpretation of an iconic text from the full range of paratextual materials that inform our understanding of it.

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I. INTRODUCTION

Have you ever felt disappointment that a movie based on a novel didn't live up to the book? Experienced confusion or consternation during a film because what you're watching doesn't seem to line up with your expectations generated by the trailer or other marketing? Watched a movie or television show—or avoided one—because of a recommendation from a friend or a review from a critic? Become intrigued enough to watch a television series after encountering a compelling interview with its creator or a cast member? Or become disillusioned with a story you used to love because of subsequent revelations about its creator?[1] Decided that an interpretation of a character generated within the fan community is more enjoyable and entertaining than the official portrayal? Have you ever judged a book by its cover?

Everyone has done some or all of these while making decisions about which works of entertainment media to consume. That means all of us understand—even if we're not familiar with the scholarly label for it—the concept of media paratext.

In the fields of media studies and fan studies, the concept of paratext is one vector for analyzing and understanding how audiences ingest and interpret media texts, such as a novel or movie. Amid our media-rich society, after all, it is all but impossible to interact solely with a media text in isolation. Rather, we also invariably interact with a wide variety of other associated texts—official materials like trailers or marketing as well as unofficial materials like reviews or fan reactions—which play a role in shaping our interpretation of the core media text. And this is true across the range of viewers and readers, from casual consumers to the most dedicated fans. The scholarly liter-

1. The most prominent recent example probably is J.K. Rowling, whose vocally expressed views opposing transgender rights in the U.K. have alienated many previously devoted fans of the *Harry Potter* franchise. *See, e.g.*, Molly Fischer, *Who Did J.K. Rowling Become? Deciphering the most beloved, most reviled children's-book author in history*, VULTURE (Dec. 22, 2020), https://www.vulture.com/article/who-did-j-k-rowling-become.html. Other entertainment industry figures include, for example, the well-known allegations against Woody Allen, Michael Jackson, Kevin Spacey, and Bill Cosby.

ature on media paratext provides a number of important lessons for better understanding media industries, audiences, and fandom.

The concept of paratext also offers a powerful analogy for constitutional interpretation. We do not interpret texts in isolation, but always in association with related materials that inform our understanding of them. Interpretation of a media text can include insights from academic fields such as cinema studies or literary theory, from professional perspectives like movie critics and book reviewers, and from the fan community and the general audience. Similarly, the interpretation of the U.S. Constitution might involve contributions from theoretical or empirical work by law professors and experts in other academic disciplines, from skilled professionals like lawyers and judges parsing and applying doctrinal principles and judicial decisions, and from the amateur "law office history" that sometimes makes its way into a litigation record.[2] In both instances, the determination of the meaning of a canonical text is often a highly contestable and contested proposition.

Ultimately, the analogy to media paratext demonstrates why the proffered objective of originalism is impossible to attain. Comparing constitutional interpretation to another interpretive canon with an extensive history of debates and controversies over textual and paratextual meaning—the *Star Wars* franchise—illustrates the futility of any approach which attempts to impose an exclusive method of interpretation upon a core text or to privilege one particular paratextual source above all others. The analytical and empirical insights from the media studies and fan studies concept of paratext reinforce the conclusion that the meaning of an iconic text—including the U.S. Constitution—cannot be the domain of a particular perspective or methodology, but rather constitutes a product of consensus among the interpretive community.

II. PARATEXT AND THE INTERPRETATION OF ITS ASSOCIATED TEXT

Legal analysis certainly would be simpler if more legal texts actually contained a "plain meaning" which could be readily discerned and applied. Notwithstanding the assertions of some legal minds, such as Justice Black in constitutional interpretation and Justice Scalia in statutory interpretation, textualism alone usually is not dispositive.[3] To be sure, the text of the U.S. Constitution does contain some provi-

2. *See, e.g.*, Saul Cornell, Heller*, New Originalism, and Law Office History: "Meet the New Boss, Same as the Old Boss"*, 56 UCLA L. REV. 1095, 1099-100 (2009).

3. *See* Michael J. Gerhardt, *A Tale of Two Textualists: A Critical Comparison of Justices Black and Scalia*, 74 B.U. L. REV. 25, 63 (1994); *see also, e.g.*, ANTONIN SCALIA,

sions which have been essentially uncontestable in their meaning, such as: the minimum ages for elected Representatives, Senators, and the President; each state seats two Senators; the District of Columbia is *not* a state, which is why it has no Senators and why the Twenty-Third Amendment was necessary to grant it electors in the presidential Electoral College.[4] In contrast, the Constitution's crucially important individual rights provisions—the ones consistently producing constitutional litigation—are famously indeterminate on the face of the text. To mention a few: what does "the freedom of speech" mean, what actions qualify as "unreasonable searches and seizures" by the police, and when does a state deny a person the "equal protection of the laws"? We have long realized that the meaning we give to these provisions is found beyond the Constitution's text alone.

Precisely because the U.S. Constitution is not the sort of text that provides large numbers of definitive answers about its own meaning, for many years legal scholars have drawn upon insights from other fields or methods of textual interpretation when crafting arguments about constitutional interpretation. One influential example is Yale professor Akhil Amar's article in the *Harvard Law Review* on "intratextualism"—the method of examining how a text uses the same words in different passages.[5] Other interpretive ideas transposed into legal scholarship on constitutional interpretation include theology,[6] postmodernism,[7] critical theory,[8] hermeneutics,[9] and corpus linguistics.[10]

A MATTER OF INTERPRETATION 13 (1997); Akhil Reed Amar, *2000 Daniel J. Meador Lecture: Hugo Black and the Hall of Fame*, 53 ALA. L. REV. 1221, 1233 (2002).

4. *See* U.S. CONST. art. I, § 2, cl. 2, § 3, cl. 1, § 3, cl. 3; *id.* art. II, § 1, cl. 5, § 8, cl. 17; *id.* am. XXIII.

5. *See* Akhil Reed Amar, *Intratextualism*, 112 HARV. L. REV. 747, 748 (1999). *But see* Ernest A. Young & Adrian Vermeule, *Hercules, Herbert, and Amar: The Trouble With Intratextualism*, 113 HARV. L. REV. 730, 730 (2000). This method of analysis appears, for example, in both the majority and dissenting opinions in the Supreme Court's decision interpreting the Second Amendment to invalidate a handgun ban, with the justices disagreeing over the interpretive implications of references to the "militia" appearing both in Article I and in the Second Amendment. *See* District of Columbia v. Heller, 554 U.S. 570, 579-82, 595-600 (2008); *id*. at 640-46, 651-62 (Stevens, J., dissenting).

6. *See, e.g*., H. JEFFERSON POWELL, THE MORAL TRADITION OF AMERICAN CONSTITUTIONALISM: A THEOLOGICAL INTERPRETATION 7-8 (1993).

7. *See, e.g*., STANLEY FISH, THE TROUBLE WITH PRINCIPLE (1999); STANLEY FISH, THERE'S NO SUCH THING AS FREE SPEECH, AND IT'S A GOOD THING, TOO (1994).

8. *See, e.g*., MARK TUSHNET, RED, WHITE, AND BLUE: A CRITICAL ANALYSIS OF CONSTITUTIONAL LAW (1988); Derrick A. Bell, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

9. *See, e.g*., LEGAL HERMENEUTICS: HISTORY, THEORY, AND PRACTICE (Gregory Leyh ed., University of California Press 1992).

10. *See, e.g*., Lawrence B. Solum, *Triangulating Public Meaning: Corpus Linguistics, Immersion, and the Constitutional Record*, 2017 B.Y.U. L. REV. 1621, 1671; Evan C.

Another scholarly perspective on the creation and implications of extra-textual interpretations of a text is the concept of "paratext" from the fields of media studies and fan studies.[11] Although the concept might at first seem far removed from the doctrinal complexities and the political and societal stakes of constitutional interpretation, the similarities are striking—and they suggest several important conclusions about originalism and constitutional theory.

A. Media Paratext and the Interpretation of Media Texts

A groundbreaking treatment of the significance of media paratexts—describing and analyzing how meanings of a media text can be inextricably interconnected with the interpretations created by, derived from, or shared with its associated extra-textual material—is Professor Jonathan Gray's 2010 monograph *Show Sold Separately: Promos, Spoilers, and Other Media Paratexts*.[12] Gray illustrates his discussion with numerous examples of official and fan-generated paratexts from a broad range of sources: movies such as *Batman Begins*, *Fight Club*, and the *Lord of the Rings* trilogy; television shows including *Lost*, *Heroes*, *Alias*, and *Twin Peaks*; and, among other licensed derivative works and consumer products, the longstanding influence of toys and merchandise in the *Star Wars* franchise. Gray notes that although his chapters often discuss fans and their interactions with media texts and franchises, his book is not a study of fan cultures as such, but rather all forms of audiences, encompassing the general public, the casual audience, non-fans, and anti-fans, as well as dedicated fans or regular viewers of media properties.[13]

Zoldan, *Corpus Linguistics and the Dream of Objectivity*, 50 Seton Hall L. Rev. 401, 403 (2019).

11. Applying the prefix "para-" to the word "text" has been used to connote different meanings than the one used in this article. *Cf., e.g.*, Ronald K.L. Collins & Daniel M. Skover, *Paratexts*, 44 Stan. L. Rev. 509, 510 (1992) (stating, "we imply a meaning of 'text' that extends beyond ('para') its conventional understanding, which is typically limited to written or printed documents. . . . [I]n the context we have adopted, 'paratext' means the electronic recording produced by currently known video technology" and future equivalents).

12. Jonathan Gray, Show Sold Separately: Promos, Spoilers, and Other Media Paratexts (2010).

13. *See id*. at 17. The body of academic scholarship in the field of fan studies is wide-ranging and extensive. *See* A Companion to Media Fandom and Fan Studies (Paul Booth ed., 2018); The Routledge Companion to Media Fandom (Melissa A. Click & Suzanne Scott, eds., 2018); *see also, e.g.*, Anti-Fandom: Dislike and Hate in the Digital Age (Melissa A. Click, ed., 2019); Fandom: Identities and Communities in a Mediated World (Jonathan Gray et al., eds., 2d ed. 2017); Kristina Busse, Framing Fan Fiction: Literary and Social Practices in Fan Fiction Communities (2017); The Fan Fiction Studies Reader (Karen Hellekson & Kristina Busse eds., 2014); Mark Duffett, Understanding Fandom: An Introduction to the Study of Media Fan Culture (2013).

Media paratexts can take a wide variety of forms. In literary theory, paratext refers to material within the book that is not part of its core text, such as the title page, dedication, or preface, as well as extrinsic sources such as advertisements, author interviews, or reviews; both types of paratext can influence the interpretation or understanding of the book by the reader.[14] Applying the concept to other media, Gray describes "entryway paratexts" that can shape interpretations prior to encountering the text itself, such as promotion, reviews, and merchandise, as well as "in media res paratexts" that affect interpretation and meaning during or after the experience of interacting with the text, such as DVD bonus features, toys and videogames, and online audience discussions about the text.[15] "Entryway paratexts" operate to direct our initial interpretations of a text by setting expectations for what the text will be, while "in media res paratexts" can, among other functions, seek to police the proper interpretations of the text intended by its creators.[16]

Gray also emphasizes that paratexts may serve different functions, or hold different degrees of significance, depending on the context in which they arise or appear. Some paratexts are more prominent within fan interpretive communities, such as spoilers, speculation, and transformative works.[17] Other paratexts are especially influential with the general audience—and sometimes, a person's only experience will be with the paratext, as in the case of a trailer or advertisement for a movie the person never watches.[18]

The importance of Gray's analysis for purposes of this article, however, comes not from his delineation and evaluation of various types of media paratexts, but rather from his insight that paratext can supersede text both in establishing meaning and in its significance to the interpreter.[19] For media texts, "there is never a point in time at which a text frees itself from the contextualizing powers of paratextu-

14. *See* GRAY, *supra* note 12, at 25 (explaining literary paratexts described in GERARD GENETTE, PARATEXTS: THE THRESHOLDS OF INTERPRETATION (Jane E. Lewin, trans., 1997)); Robert Spoo, *Courtesy Paratexts: Informal Publishing Norms and the Copyright Vacuum in Nineteenth-Century America*, 69 STAN. L. REV. 637, 640-50 (2017). Peter Beck applied Genette's concept of "paratext" to the document of the U.S. Constitution itself, identifying paratextual features such as the Preamble, signers' signatures, official or unofficial section titles, and ratification dates. *See* Peter Beck, *The Parts We Skip: A Taxonomy of Constitutional Irrelevancy*, 34 CONST. COMMENT. 223, 244-51 (2019).

15. *See* GRAY, *supra* note 12, at 23, 35-39, 40-45.

16. *See id*. at 79.

17. *See id*. at 119-31, 135-41, 143-61, 173-74.

18. *See id*. at 24-26, 37-39, 79, 139, 166-73.

19. This issue is the prominent theme of *Show Sold Separately*; in the first chapter, Gray writes: "A continuing question for this book, therefore, will be the degree to which paratexts overtake and subsume their texts, and the conditions under which they do so." *Id.* at 39.

ality."[20] Just as corporations rebrand themselves to try to rekindle customer interest in their products and new works of historical scholarship can cause us to think or feel differently about past events, so too can paratext change our interpretation or understanding of a text, whether in the form of a thoughtful review by a film or television critic, an academic article analyzing the text, or a licensed videogame that expands the personal experience within the story world.[21] Paratexts can create meaning that becomes just as authoritative to the fan community as the text itself.[22] On occasion, even, a later official text—a sequel movie or a subsequent episode in a television series—fails to resonate with the fans because it contradicts, or deviates too far from, the accepted meaning established by preceding paratexts.[23]

Ultimately, because paratexts hold "considerable power to amplify, reduce, erase, or add meaning, much of the textuality that exists in the world is paratext-driven," to the point that "paratexts sometimes take over their texts."[24] When that happens, in a functional sense it no longer matters whether the initial source of the meaning was the text or the paratext—the dispositive meaning has been settled regardless.

The long history of the *Star Wars* franchise and its fandom readily illustrates the prominence—and interpretive dominance—of paratext.[25] Much of what we know and understand about *Star Wars* cannot be found within the metaphorical four corners of the canonical text created by George Lucas. The word "Ewok" is never spoken in *Return of the Jedi*, but fans have known that name for the cute-but-deadly forest dwellers all along.[26] Fans in the Original Trilogy era

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20. *Id*. at 45.

21. *Id.*

22. *See id.* at 22, 37-38, 40-42, 46, 159-66.

23. *See id*, at 135-41, 144-46, 154-59.

24. *Id.* at 46, 45.

25. For scholarly discussion of the *Star Wars* franchise and fandom in the fields of fan studies and media studies, *see, e.g.*, DISNEY'S *STAR WARS*: FORCES OF PRODUCTION, PROMOTION, AND RECEPTION (William Proctor & Richard McCulloch eds., 2019); STAR WARS AND THE HISTORY OF TRANSMEDIA STORYTELLING (Sean Guynes & Dan Hassler-Forest, eds., 2017); DAN GOLDING, *STAR WARS* AFTER LUCAS: A CRITICAL GUIDE TO THE FUTURE OF THE GALAXY (2019); WILL BROOKER, USING THE FORCE: CREATIVITY, COMMUNITY, AND *Star Wars* Fans (2002). For other sources which emphasize the prominence of paratextual materials in the franchise's history, *see, e.g.*, KEN NAPZOK, WHY WE LOVE *STAR WARS* (2019); CHRIS TAYLOR, HOW *STAR WARS* CONQUERED THE UNIVERSE: THE PAST, PRESENT, AND FUTURE OF A MULTI-BILLION DOLLAR FRANCHISE (2014); A GALAXY NOT SO FAR AWAY (Glenn Kenny ed., 2002).

26. *See* Graeme McMillan, *30 Things You Didn't Know About* Return of the Jedi, WIRED (May 24, 2013), https://www.wired.com/2013/05/return-of-the-jedi-anniversary/ ("6. The word 'Ewok' is never actually said in *Return of The Jedi*, and neither were the names of individual Ewoks, although both appear in the end credits.").

shared the lore that Darth Vader had been injured and burned in a lightsaber duel with Obi-Wan Kenobi near lava, or perhaps a volcano, long before Lucas created the world of Mustafar for *Revenge of the Sith*.[27] Boba Fett wore the armor of a Mandalorian Supercommando thirty years before Lucas put them onscreen in *The Clone Wars*.[28] Leia Organa and Han Solo were a married couple in novels published for more than a quarter century prior to the release of *The Force Awakens*.[29] Over four decades, the *Star Wars* franchise has included deep and multi-faceted layers of meaning that did not arise from within the foundational text itself.

B. Originalism, Paratext, and the Interpretation of the Constitutional Text

The decisions of the United States Supreme Court interpreting the highly general and facially indeterminate textual provisions of the U.S. Constitution, frequently developing extensive bodies of case law in the process, can be analogized to the concept of media paratext: the Court's decisions are not themselves the textual material of the Constitution, but they shape our understanding of what the Constitution's text means. The U.S. Constitution contains fewer than 8,000 words. As of the conclusion of the October 2019 Term in July of 2020, the Court's decisions are printed and reported in 591 volumes of the *United States Reports*—and all but the shortest of those published decisions each individually exceeds that word count. The amount of words the Court has devoted to interpreting the Constitution is literally orders of magnitude greater than the sparse underlying text.

As a descriptive matter, both the text of the Constitution and the Court's precedent are *constitutional law* in the practical sense that, most of the time, it is the case law which is cited and debated by lawyers as the applicable legal authority on whether a particular govern-

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27. The novelization of *Return of the Jedi*, for example, includes spectral Obi-Wan Kenobi telling Luke Skywalker that "your father fell into a molten pit" during their fateful duel. James Kahn, *Return of the Jedi*, at 80, *reprinted in* The Star Wars Trilogy: The 25th Anniversary Collector's Edition (2002).

28. *See, e.g.*, Tom Bissell, *Pale Starship, Pale Rider: The Ambiguous Appeal of Boba Fett*, *in* Galaxy Not So Far, *supra* note 25, at 10 ("His armor—dented, sandblasted, scarred by unimaginable travails—is Mandalorian, . . . though his connection to that mighty people remains unclear.").

29. Leia and Han were already married in *Heir to the Empire*, Timothy Zahn's 1991 novel kicking off the Expanded Universe paratextual storytelling era; the events leading to their nuptials were subsequently portrayed in *The Courtship of Princess Leia*, a 1994 novel by Dave Wolverton. Novels featuring Leia and Han as a married couple continued until 2013's *Crucible* by Troy Denning, which took place 37 years later on the in-universe timeline.

ment action is constitutional or unconstitutional.[30] As a normative matter, the nature and scope of the Court's authority to define the meaning of constitutional law is more complicated; a detailed examination of the pertinent constitutional theory is beyond the scope of this article, and originalism is one prominent theory among many.[31]

The principal analytical objective of originalism as a constitutional theory is to circumscribe the boundaries of constitutional paratext by privileging one particular form of extra-textual information about the Constitution and denying the interpretive legitimacy of any other extra-textual or paratextual considerations.[32] Originalism acknowledges, as it must, that the text alone cannot answer most disputed questions about the Constitution's meaning. Originalists nonetheless maintain that the only legitimate source for supplementing the text is historical information about the "original meaning" of the applicable constitutional provision. Over the past several decades, originalists have defined and refined, and sometimes disagreed about, the parameters of this concept of constitutional original meaning.[33] Analytical variations include the original intention of the drafters,[34]

30. Though he does not use the label "paratext," Professor Tribe has discussed a similar distinction. *See* LAURENCE TRIBE, THE INVISIBLE CONSTITUTION 1-21 (2008). The U.S. Supreme Court also sometimes frames the relationship between its precedent and the Constitution in a similar manner. *See, e.g.*, Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241, 254 (1974) ("[T]he express provisions of the First Amendment and the judicial gloss on that Amendment developed over the years.").

31. For example, some prominent non-originalist scholars advance arguments that Supreme Court decisions can and do attain authoritative status in defining the Constitution's meaning which is comparable to an Article V amendment. *See* BRUCE ACKERMAN, WE THE PEOPLE, VOLUME 1: FOUNDATIONS (1991) (describing a theory of "constitutional moments" during which the people, through the actions of the political branches as well as the confirming decisions of the Supreme Court, can alter the meaning of the Constitution without Article V amendments, such as the New Deal and the Civil Rights Movement in addition to the Founding era and Reconstruction); BRUCE ACKERMAN, WE THE PEOPLE, VOLUME 2: TRANSFORMATIONS (1998) (same); BRUCE ACKERMAN, WE THE PEOPLE, VOLUME 3: THE CIVIL RIGHTS REVOLUTION (2014) (same); DAVID A. STRAUSS, THE LIVING CONSTITUTION (2010) (defending a descriptive and normative theory of constitutional interpretation by the Supreme Court as a form of common law decision-making). On the other hand, originalists would reject such conclusions: they view the original meaning of the Constitution's text as the controlling authority.

32. Professor Eric Segall, for example, provides this definition of originalism: "an originalist judge or scholar is someone who believes the following three propositions: (1) the meaning of the constitutional text is fixed at the time of ratification; (2) judges should give that meaning the primary role in constitutional interpretation; and (3) pragmatic modern concerns and consequences are not allowed to trump discoverable original meaning (although adhering to precedent might)." ERIC J. SEGALL, ORIGINALISM AS FAITH 8-9 (2018).

33. *See, e.g.*, SEGALL, *supra* note 32, at 56-121; Eric Berger, *Originalism's Pretenses*, 16 U. PA. J. CONST. L. 329, 332-40 (2013).

34. *See, e.g.*, Jack M. Balkin, *Original Meaning and Constitutional Redemption*, 24 CONST. COMMENT. 427, 444 (2007) ("In the early 1980s conservative lawyers like Attorney General Edwin Meese argued for a return to a jurisprudence of 'original intention.'").

the original understanding of the ratifiers,[35] the original "public meaning" of the text at the time of ratification,[36] the original expected application of the provision at the time of its ratification,[37] and the original understanding of the constitutional principle (but not necessarily particular applications) contained in the text being ratified.[38] Regardless of the differences among the various versions, originalism denies that constitutional interpretation appropriately may take account of extra-textual factors such as personal, political, or moral values; pragmatic considerations; or changed values in contemporary American society compared to the time of ratification. Importantly, even the status of existing Supreme Court precedent as valid constitutional paratext is called into serious question by most versions of an originalist approach.[39]

My purpose in making the case for a descriptive analogy between *Star Wars* paratext and Supreme Court case law is to demonstrate how originalism's attempt to police the boundaries of legitimate

35. *See, e.g.*, Balkin, *supra* note 34, at 445 ("'Original understanding' better captured a focus on the authorizing audience for the text as opposed to the text's drafters."); Berger, *supra* note 33, at 333 (citing Lawrence B. Solum, *We Are All Originalists Now*, *in* CONSTITUTIONAL ORIGINALISM: A DEBATE 12, 19 (Robert W. Bennett & Lawrence B. Solum eds., 2011)) ("[G]enerally speaking, original-intentions originalism focuses on the intentions of the Constitution's Framers . . . Original-understanding originalism, by contrast, . . . looks to the understandings of the Constitution's ratifiers.").

36. *See, e.g.*, Lawrence B. Solum, District of Columbia v. Heller *and Originalism*, 103 NW. U. L. REV. 923, 933 (2009) ("[T]he original meaning of the Constitution is the original *public* meaning of the constitutional text.").

37. *See, e.g.*, Jack M. Balkin, *Abortion and Original Meaning*, 24 CONST. COMMENT. 291, 296 (2007) ("Original expected application asks how people living at the time the text was adopted would have expected it would be applied using language in its ordinary sense (along with any legal terms of art).").

38. *See, e.g.*, Steven G. Calabresi & Julia T. Rickert, *Originalism and Sex Discrimination*, 90 TEX. L. REV. 1, 11 (2011) ("We conclude that the original public meaning of the Fourteenth Amendment is that it bans all systems of caste and of class-based lawmaking . . . . Once women were given equal political rights by the Nineteenth Amendment, a reading of the general ban on caste systems in the Fourteenth Amendment that did not encompass sex discrimination became implausible.").

39. Originalist scholars generally urge reduced weight for *stare decisis* when the Court's existing precedent conflicts with the originalist's conclusion about the original meaning. *See, e.g.*, Amy Coney Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921, 1921-22 (2017); Randy J. Kozel, *Stare Decisis in the Second-Best World*, 103 CAL. L. REV. 1139, 1147-50 (2015); John O. McGinnis & Michael B. Rappaport, *Reconciling Originalism and Precedent*, 103 NW. U. L. REV. 803 (2009). Among self-described originalist justices on the Court, however, the willingness to overrule longstanding precedent tends to be somewhat less bold. *See, e.g.*, SEGALL, *supra* note 32, at 122-40, 156-170; *see also* Ramos v. Louisiana, 140 S. Ct. 1390, 1405 (2020) (opinion of the Court by Gorsuch, J.) (applying *stare decisis* factors the Court has "traditionally considered" in deciding whether to overrule a precedent); *id.* at 1414 (Kavanaugh, J., concurring) (describing "special justification or strong grounds" required to overrule a constitutional law precedent); *id.* at 1421-22 (Thomas, J., concurring in the judgment) (urging standard, based on prior opinions, of overruling precedent when it is "demonstrably erroneous").

paratextual interpretation is doomed to fail both practically and conceptually. In doing so, the analogy supports my normative conclusion about the futility of originalist constitutional interpretation.

III. TEXT AND PARATEXT IN THE CONTESTED MEANING OF THE CANON

One of the core premises of originalist interpretation is that the meaning of the U.S. Constitution is fixed and unchanging.[40] If we want to change what the Constitution means or requires, they argue, then we must amend the text using the procedures provided in Article V. Likewise, originalists maintain, altering the legally enforceable meaning of the text through paratextual interpretation constitutes an illegitimate usurpation of judicial power.

The analogy to media paratext demonstrates the fundamental flaw with this claim. Put simply, that's not how textual interpretation works. Canonical meanings of a text can, do, and always will change under the interpretive influence of paratext.

A. Paratext and its Relationship to Understanding the Canon

Like U.S. constitutional law, the *Star Wars* franchise always has consisted of a far larger amount of paratext compared to the quantity of canonical text. The existence of *Star Wars* paratext in fact precedes the release of the first movie on May 25, 1977: media coverage about the upcoming film, promotion at San Diego Comic-Con in the summer of 1976, and the publication of the novelization of the movie (attributed to George Lucas but ghost-written by Alan Dean Foster) in December of 1976 by prominent science fiction imprint Del Rey.[41] Upon the movie's incredible box office and critical success, media coverage expanded considerably too. Fans learned new information about *Star Wars* from interviews with Lucas and the cast and crew, ongoing pro-

40. *See, e.g.*, Lawrence B. Solum, *The Fixation Thesis: The Role of Historical Fact in Original Meaning*, 91 Notre Dame L. Rev. 1 (2015); Frederick Mark Gedicks, *The "Fixation Thesis" and Other Falsehoods*, 72 Fla. L. Rev. 219 (2020). Some self-described originalists assert that this premise is consistent with Supreme Court decisions enshrining contemporary, not historical, values by relying upon the argument that it is the facts, not the law, which has changed. *See, e.g.*, Segall, *supra* note 32, at 104-115 (evaluating "inclusive originalism"); William Baude, *Is Originalism Our Law?*, 115 Colum. L. Rev. 2349, 2356 (2015), *quoted in* Segall, *supra* note 32, at 105 ("a word can have a fixed abstract meaning even if the specific facts that meaning points to change over time").

41. *See, e.g.*, Scott Feinberg, *He Was* Star Wars' *Secret Weapon, So Why Was He Forgotten?*, The Hollywood Reporter (Feb. 6, 2020), https://www.hollywoodreporter.com/features/he-was-star-wars-secret-weapon-why-was-he-forgotten-1275211 ("Ashley Boone Jr., the first black president of a major Hollywood studio, helped make George Lucas' quirky space opera a hit in the 1970's—yet chances are you've never heard of him.").

motional materials, toy packaging and tie-in merchandise, and other sources.[42] Paratextual storytelling continued, as well, including an eponymous loose-leaf comic series from Marvel Comics, a separate serialized comic strip in newspapers, and the Del Rey novels *Splinter of the Mind's Eye* by Foster in 1978 and *Han Solo at Star's End* and *Han Solo's Revenge* by Brian Daley in 1979. And that was the paratext arriving even before *The Empire Strikes Back*.[43]

The canonical text of the Original Trilogy films concluded in 1983, but the production of *Star Wars* paratext hardly wavered. The newspaper strip wound down in 1984, the renowned line of Kenner action figures continued producing new toys into 1985, and Marvel Comics published *Star Wars* stories until the summer of 1987. Later that year, the primary generation of paratext passed to a new licensee: West End Games ("WEG"), which launched *Star Wars: The Roleplaying Game*. Within three years, WEG had published over twenty books to support the game—and, with Lucasfilm's blessing and support, the WEG products for the first time provided official names and backstory lore for many of the countless aliens, vehicles, weapons, and technology seen in the *Star Wars* films.[44] In 1991, *Star Wars* returned to the creation of paratextual storytelling with the publication of Timothy Zahn's #1 *New York Times* bestselling novel *Heir to the Empire* from Bantam and the start of the comic series *Dark Empire* from Dark Horse Comics—each of which told a story taking place a number of years after *Return of the Jedi* and starring Luke Skywalker as a Jedi Knight, Princess Leia and Han Solo as a married couple with children, and other familiar characters. By the time *The Phantom Menace* released in 1999, WEG had produced well over one hundred game manuals while Bantam and Dark Horse had published dozens of *Star Wars* stories ranging far afield from Lucas' first three movies.

Lucas' return to the movie screen to add new canonical text to the *Star Wars* franchise, however, did not inhibit the production of paratext—far from it. Some of this new paratext paralleled the original: anticipation for and excitement about the Prequel Trilogy gener-

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42. For example, Kenner sold 26 million *Star Wars* action figures in 1978 alone. *See* Lincoln Geraghty, Star Wars *Merchandising and Toys as Paratexts*, DELETION (Nov. 24, 2016), https://www.deletionscifi.org/episodes/episode-12/star-wars-merchandising-and-toys-as-paratexts/.

43. Del Rey published novelizations of *The Empire Strikes Back* (April 1980) and *Return of the Jedi* (May 1983), as well as four more novels by Daley, one more in 1980 featuring Han Solo and three in 1983 starring Lando Calrissian.

44. *See, e.g.*, Tim Veekhoven, *West End Games: Expanding that Galaxy Far, Far Away. . .*, STARWARS.COM (Oct. 30, 2015), https://www.starwars.com/news/west-end-games-expanding-that-galaxy-far-far-away. *See also*, *West End Games*, WOOKIEEPEDIA, https://starwars.fandom.com/wiki/West_End_Games (last visited Nov. 12, 2021) (listing 25 published *Star Wars* materials by West End Games between 1987 and 1990).

ated interviews and related media coverage; trailers and television commercials; official behind the scenes revelations as well as unofficial leaks and spoilers; new *Star Wars* action figures and other toys; and a huge variety of licensed tie-in products.[45] Paratextual storytelling never slowed down, either. The roleplaying game license passed to Hasbro subsidiary Wizards of the Coast, which also published *Dungeons & Dragons* roleplaying game, while LucasArts released multiple top-selling and highly regarded videogames. The adult fiction license returned to Del Rey, which published novels related to the Prequel Trilogy films as well as its own flagship storyline, the New Jedi Order, featuring the Original Trilogy leads and a new generation of teenaged heroes in an epic galactic conflict set roughly a quarter-century after the Battle of Endor. Similarly, Dark Horse published comics elaborating backstory and side adventures for characters introduced in the Prequel Trilogy, while also releasing new stories for the Original Trilogy characters and new characters created for the comics. During the three-year period between *Attack of the Clones* and *Revenge of the Sith*, Del Rey, Dark Horse, and other licensees collaborated with Lucasfilm to release—roughly in "real time"—stories set during the Clone Wars being waged "offscreen" between the two films. From 1999 to 2005, the three movies released by George Lucas, though presumably the most "important" and "canonical" in their influence, comprised only a small fraction of the overall output of the *Star Wars* franchise in those years.

The following decade maintained the ongoing production of *Star Wars* canon and paratext. Though its pace slowed from the heyday of movie years, the market continued to support the sale of Hasbro action figures, LEGO building sets, children's merchandise and high-end collectibles for adults, videogames, and the roleplaying game. Lucas created and released *The Clone Wars* animated series, revisiting the galactic conflict between Episodes II and III on the *Star Wars* timeline. Del Rey followed the New Jedi Order series with more than twenty additional books featuring the same characters and continuing their stories into years further removed from the Original Trilogy. Dark Horse Comics released stories set in the far past, Prequel Trilogy era, the intertrilogy period, Original Trilogy era, and several different points in the post-Original Trilogy timeframe. When this era of *Star Wars* paratext—often called the Expanded Universe in both fandom and the official nomenclature of the time[46]—drew to a close in 2014,

45. *See, e.g.*, Jeff Jensen & Daniel Fierman, *The "Star Wars" Marketing Invasion*, ENTERTAINMENT WEEKLY (Mar. 5, 1999), https://ew.com/article/1999/03/05/star-wars-marketing-invasion/.

46. *See, e.g.*, CAROLYN COCCA, SUPERWOMEN, GENDER, POWER, AND REPRESENTATION 87 (2016); TRANSMEDIA STORYTELLING, *supra* note 25, at 9.

many millions of people, not only hardcore *Star Wars* fans, had become familiar with a wide variety of ideas, themes, characters, in-universe lore, and terminology about the *Star Wars* franchise that came from the paratext.

In the same way, the vast majority of what we think of as constitutional law comes from the paratext—usually, but not always, the United States Supreme Court's decisions interpreting the meaning of constitutional provisions[47]—rather than from the text itself. Many Americans have consumed enough pop culture entertainment to be able to recite the *Miranda* warnings from memory, perhaps without realizing they appear nowhere in the Constitution but instead their familiar formulation is taken almost verbatim from the Court's opinion.[48] The phrase "clear and present danger" similarly comes from the Court's opinions, though over fifty years have passed since the Court abrogated it as the doctrinal standard for free speech cases relating to advocacy of criminal activity.[49] Some terminology from the Constitution's text also is commonly recognizable, such as the prohibition of "cruel and unusual punishments" in the Eighth Amendment, but the Court's paratext has generated a large, complex, and sometimes inconsistently applied body of case law addressing such issues as which modes of punishment are *per se* prohibited, when an otherwise lawfully available punishment becomes sufficiently disproportional on the facts of the particular case as to be unconstitutional, and the limitations and restrictions governing the imposition of capital punishment.[50]

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47. Importantly, case law has less significance when the constitutional question is not being resolved in the context of litigation. Constitutional interpretation outside of the Supreme Court, including by Executive Branch officials as well as in relation to disputes between the Executive and Congress which are not amenable to judicial resolution, nevertheless involves similar methodologies of constitutional interpretation and significant interpretive weight accorded to the outcomes and rationales of previous interpretive controversies. *See, e.g.*, H. JEFFERSON POWELL, TARGETING AMERICANS: THE CONSTITUTIONALITY OF THE U.S. DRONE WAR (2016); H. JEFFERSON POWELL, THE PRESIDENT'S AUTHORITY OVER FOREIGN AFFAIRS: AN ESSAY IN CONSTITUTIONAL INTERPRETATION (2002); H. JEFFERSON POWELL, THE CONSTITUTION AND THE ATTORNEYS GENERAL (1999).

48. *See* Miranda v. Arizona, 384 U.S. 436, 444-45, 468-479 (1966).

49. *See, e.g.*, Schenck v. United States, 249 U.S. 47, 52 (1919); *see also* Brandenburg v. Ohio, 395 U.S. 444, 452, 454 (1969).

50. "The scope of the Cruel and Unusual Punishments Clause extends not only to barbarous methods of punishment, but also to punishments that are grossly disproportionate." Rummel v. Estelle, 445 U.S. 263, 288 (1980). On modes of punishment, see, e.g., Glossip v. Gross, 576 U.S. 863, 863 (2015); Hope v. Pelzer, 536 U.S. 730, 745 (2002); Hudson v. McMillian, 503 U.S. 1, 8 (1992); *Rummel*, 445 U.S. at 287-88. For sharply divided decisions applying proportionality doctrine, see, e.g., Ewing v. California, 538 U.S. 11, 23 (2003); Harmelin v. Michigan, 501 U.S. 957, 958, 960 (1991); *Rummel*, 445 U.S. at 272. For recent controversial and sharply divided decisions involving capital punishment, which cite and discuss earlier case law, see, e.g., *Glossip*, 576 U.S. at 869;

And once we move beyond the range of constitutional terminology and concepts that have reached general public attention, the breadth and depth of the Supreme Court's paratext rivals the immense Expanded Universe of *Star Wars*. At many law schools today, the *introductory* courses in constitutional law span two semesters and six credit hours. Law schools may offer an entire course on First Amendment law, or even separate courses on freedom of speech, press, and religion, among a wide variety of elective offerings relating in whole or in part to constitutional law doctrines.[51] On the other hand, it is also paratext which leads law school constitutional law courses to quickly dispense with study of the Privileges or Immunities Clause of the Fourteenth Amendment: the Supreme Court effectively deprived it of meaningful substantive content in the notorious *Slaughterhouse Cases*[52] five years after ratification, has applied it to invalidate government action only once in the modern era, and recently declined the invitation to overrule *Slaughterhouse* when the question was briefed and argued.[53] Though a significant number of Supreme Court cases address the high degree of privacy accorded to the home under the Fourth Amendment, the lack of similar case law paratext leaves the adjacent Third Amendment generally ignored, if not unmentioned, in the law school curriculum and by the Court, despite the fact that the Third Amendment's text overtly protects the home from (one explicitly enumerated form of) unwanted and invasive government intrusion.[54]

Kennedy v. Louisiana, 554 U.S. 407, 421 (2008); Roper v. Simmons, 543 U.S. 551, 561 (2005); Atkins v. Virginia, 536 U.S. 304, 311-12 (2002).

51. Courses in administrative law, election law, and civil rights law, for example, typically involve substantial study of statutory law as well as the relevant constitutional principles. Other courses such as intellectual property law, federal criminal law or white-collar criminal law, and environmental law typically would include some discussion of governing constitutional law doctrines but primarily would emphasize the statutory provisions that for the most part encompass the field. Some required courses include units involving constitutional law, such as the Confrontation Clause in Evidence or the Takings Clause when covered in Property.

52. 83 U.S. 36 (1872).

53. *See* Slaughter-House Cases, 83 U.S. 36, 79-80 (1872); Saenz v. Roe, 526 U.S. 489, 501, 517-18 (1999); McDonald v. Chicago, 561 U.S. 742 (2010). Justice Thomas was the only member of the Court who wrote, in an extensive concurring opinion, to express interest in revisiting the Court's longstanding interpretation of the Privileges or Immunities Clause. *See McDonald*, 561 U.S. at 805-06, 811-13 (Thomas, J., concurring in part and concurring in the judgment); Ramos v. Louisiana, 140 S. Ct. 1390, 1424 (2020) (Thomas, J., concurring in the judgment) (internal quotations omitted) ("I decline to apply the legal fiction of due process incorporation. . . . I would accept petitioner's invitation to decide this case under the Privileges or Immunities Clause."); *id.* (Gorsuch, J., concurring) *(*quoting Timbs v. Indiana, 139 S. Ct. 682, 691 (2019)) ("nothing in this case turns on that question," i.e., whether incorporating the Bill of Rights to restrict state governments under Section One of the Fourteenth Amendment ought to be doctrinally grounded in the Privileges or Immunities Clause rather than the Due Process Clause).

54. For cases emphasizing the Fourth Amendment's special degree of protection of homes, see, e.g., Florida v. Jardines, 569 U.S. 1, 6 (2013); Kyllo v. United States, 533

From a practical standpoint, it is the paratext, not the text, which defines the meaning of U.S. constitutional law in law schools, in the legal profession, and in the Supreme Court.

B. Disavowed Paratext and "Incorrectly" Interpreting the Canon

A longstanding problem in constitutional theory, including originalism, concerns how to account for those infamous decisions of the Supreme Court which are, in hindsight, deemed not merely to be wrongly decided and rightfully overruled, but also to be so egregiously harmful to the Court's institutional legitimacy that any credible theory of constitutional interpretation must be able to explain how it disavows them. The decision in *Dred Scott v. Sandford*,[55] for example, is universally condemned—and probably overdetermined in the reasons for its designation as one of the worst decisions in the Court's history.[56] The ruling in *Plessy v. Ferguson*,[57] deeming separate-but-equal facilities to comply with the Equal Protection Clause of the Fourteenth Amendment, would be included on the list.[58] So too *Korematsu v. United States*[59], upholding the internment of Japanese Americans on the West Coast during World War II over dissents expressly condemning the majority for complicity in racism.[60] A century

U.S. 27, 31 (2001). By contrast, as of this writing, the Third Amendment is cited substantively on the merits (i.e., in support of reasoning about the scope of constitutionally protected privacy) within the body of the text of only one majority opinion of the Court, which itself drew on a previous dissenting opinion for the analytical point. *See* Griswold v. Connecticut, 381 U.S. 479, 484 (1965); Poe v. Ullman, 367 U.S. 497, 549 (1961) (Harlan, J., dissenting). The Third Amendment is cited tangentially within two familiar opinions which are well known for other reasons. *See* Katz v. United States, 389 U.S. 347, 351 n.5 (1967); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 644 (1952) (Jackson, J., concurring); Laird v. Tatum, 408 U.S. 1, 15 (1972) (holding that plaintiffs' challenge to Army domestic surveillance program must be dismissed due to failure to demonstrate Article III standing).

55. 60 U.S. 393 (1857).

56. Dred Scott v. Sandford, 60 U.S. 393 (1857); *see, e.g.*, Jack M. Balkin & Sanford Levinson, *Thirteen Ways of Looking at* Dred Scott, 82 Chi.-Kent L. Rev. 49 (2007); Mark A. Graber, *Dred Scott* and the Problem of Constitutional Evil (2006); Segall, *supra* note 32, at 25-29.

57. 163 U.S. 357 (1896).

58. Plessy v. Ferguson, 163 U.S. 537 (1896).

59. 323 U.S. 214 (1944).

60. Korematsu v. United States, 323 U.S. 214 (1944); *id.* at 206 (Murphy, J., dissenting) ("I dissent, therefore, from this legalization of racism."); *id.* at 246 (Jackson, J., dissenting) (arguing that Court's opinion will have "validated the principle of racial discrimination in criminal procedure"); *see also* Trump v. Hawaii, 138 S. Ct. 2392, 2423 (2018) ("The dissent's reference to *Korematsu*, however, affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'" (quoting *Korematsu*, 323 U.S. at 248 (Jackson, J., dissenting))); *Trump*, 138 S. Ct. at 2447-48 (Sotomayor, J., dissenting) ("Today's holding is

ago in a series of 1919 cases including *Abrams v. United States*,[61] the Court rejected First Amendment challenges and upheld the criminal convictions of political dissenters speaking out against conscription in World War I and the detrimental impacts on workers of unregulated capitalism.[62] Although less stark in its stakes—whether a labor law regulating working conditions for bakers constituted an unconstitutional interference with freedom of contract or economic liberty—*Lochner v. New York*[63] is frequently discussed as another wrong or misguided decision which contemporary constitutional theories and Supreme Court decisions are obligated to avoid repeating.[64] Among the justices on the Court and beyond, some would include *Roe v. Wade*,[65] recognizing a constitutional right to terminate a pregnancy prior to fetal viability,[66] or *Bowers v. Hardwick,*[67]refusing to recognize constitutional protection against criminal prosecution for acts of same-sex sodomy,[68] on the list of similarly wrong decisions.

This remains a recurring problem in constitutional theory because it is not easy to identify, much less reach a consensus about, the specific conceptual reasons that explain *why* the Court's constitutional reasoning in these cases was flawed, or *how* a particular proposed theory of constitutional interpretation would ensure many more "right" outcomes and many fewer "wrong" ones.[69] Different cases may be flawed for different reasons, and solving one flaw may not solve

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all the more troubling given the stark parallels between the reasoning of this case and that of *Korematsu* . . . This formal repudiation of a shameful precedent is laudable and long overdue. But it does not make the majority's decision here acceptable or right.").

61. 250 U.S. 616 (1919).

62. *See* Schenck v. United States, 249 U.S. 47, 49-50 (1919) (leaflets denouncing conscription of soldiers for U.S. involvement in World War I); Frohwerk v. United States, 249 U.S. 204, 205 (1919) (antiwar editorials and articles in newspaper); Debs v. United States, 249 U.S. 211, 212-13 (1919) (antiwar campaign speech by Socialist Party candidate for President of the United States in 1920 election); Abrams v. United States, 250 U.S. 616, 617 (1919) (antiwar socialist circulars).

63. 198 U.S. 45 (1905).

64. Lochner v. New York, 198 U.S. 45, 64 (1905); *see, e.g.*, Keith E. Whittington, *The New Originalism*, 2 GEO. J.L. & PUB. POL'Y 599, 601-02 (2004).

65. 410 U.S. 113 (1973).

66. Roe v. Wade, 410 U.S. 113, 114 (1973); *see also, e.g.*, Planned Parenthood v. Casey, 505 U.S. 833, 944 (1992) (Rehnquist, C.J., dissenting, joined by White, Scalia, and Thomas, JJ.) ("We believe that *Roe* was wrongly decided, and that it can and should be overruled"); *id*. at 995 (Scalia, J., dissenting) ("The Court's description of the place of *Roe* in the social history of the United States is unrecognizable.").

67. 487 U.S. 186 (1986).

68. Bowers v. Hardwick, 487 U.S. 186, 196 (1986), *overruled by* Lawrence v. Texas, 539 U.S. 558 (2003).

69. *See, e.g.*, J.M. Balkin & Sanford Levinson, *The Canons of Constitutional Law*, 111 HARV. L. REV. 963, 1017 (1998); Thomas B. Colby & Peter J. Smith, *The Return of* Lochner, 100 CORNELL L. REV. 527, 590-93 (2015); Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 380 (2011); Richard A. Primus, *Canon, Anti-Canon, and Judicial Dissent*, 48 DUKE L.J. 243, 248 (1998).

others—or may create new flaws. Perhaps the flaw in *Dred Scott*, *Lochner*, and *Roe* was that the Court engaged in inappropriate "judicial activism" by invalidating laws duly enacted by the political branches—but arguably the flaw with *Plessy*, *Abrams*, and *Korematsu* was Court's passivity in failing to vindicate the individual rights of disparaged minorities against infringement by the political majority.[70] Despite valiant efforts by its defenders to proffer explanations, originalism as a method of constitutional interpretation does not get all the iconic "wrong" cases right, either.[71]

By comparison, the instances of disavowed paratext in the *Star Wars* franchise are considerably less well known, and many casual fans may not even have heard of them. One such example is the *Star Wars Holiday Special*: though it may be an obscure reference to the general public, among the fandom it is an infamous event in the history of the franchise.[72] Broadcast during a two-hour block (including commercial breaks) on CBS on Friday, November 17, 1978, the variety show format featured the cast of *A New Hope* as well as in-*Star-Wars*-character appearances by luminaries such as Bea Arthur, Harvey Korman, Art Carney, Diahann Carroll, and (yes, really) the band Jefferson Starship. Despite what might seem to have been stellar potential, the *Holiday Special*'s combination of silliness, irreverence, and the surreal, along with its generally poor execution, was so badly received that it disappeared into the Lucasfilm vault as though it had never existed. Interestingly, the *Holiday Special* included the first appearances by members of Chewbacca's family, who later appeared in other official materials, as well as the bounty hunter Boba Fett, nemesis to Han Solo in *The Empire Strikes Back* and *Return of the Jedi*, during an animated segment. Other lore introduced in the special also has been validated by subsequent usage in canon text or subsequent paratext.[73] Yet Lucasfilm to this day treats the *Holiday Special*

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70. *Cf.* Greene, *supra* note 61, at 383 ("[A]nticanonical cases are not distinguished by unusually poor reasoning, by special moral failings, or because these problems exist in tandem.").

71. *See, e.g.*, Andrew B. Coan, *Talking Originalism*, 2009 B.Y.U. L. REV. 847, 865 (2009) ("Would we like an originalist Constitution better than the Constitution we could expect to end up with under any of the nonoriginalist approaches . . . ?"); Michael S. Lewis, *Evil History: Protecting Our Constitution Through an Anti-Originalism Canon of Constitutional Interpretation*, 18 U.N.H.L. REV. 261, 269 (2020).

72. *See, e.g.*, Webster Younce, *It's a Wonderful Life Day, or How I Learned to Stop Worrying and Love the* Star Wars Holiday Special, *in* GALAXY NOT SO FAR, *supra* note 25, at 140; Jessica Roy, *'The Star Wars Holiday Special' aired only once. 40 years later, it's still weird*, L.A. TIMES (Nov. 17, 2018), https://www.latimes.com/entertainment/herocomplex/la-et-hc-star-wars-holiday-special-20181117-story.html.

73. *See, e.g.*, Chris Edwards, The Mandalorian *has Easter Egg from Infamous* Star Wars Holiday Special, DIGITAL SPY (Nov. 13, 2019), https://www.digitalspy.com/tv/ustv/a29780765/the-mandalorian-easter-eggs-star-wars-holiday-special/.

itself as a non-entity, except for the occasional self-deprecating reference to its poor quality and deliberately archived status.[74]

Other examples of disavowed *Star Wars* paratext likewise are generally familiar only to those fairly well versed in *Star Wars* paratext in the first place. When the Expanded Universe began to grow rapidly in the mid-1990s, for example, the stories in the earlier Marvel comics series were generally ignored. Some of this no doubt was due to the comics being long out of print, while the concurrent Expanded Universe material was more readily accessible for the creators of novels, comics, videogames, and roleplaying games to synergize and interconnect their content with each other. But, like the *Holiday Special* (though usually far less extreme), the Marvel comics also likely contained a bit too much late-1970s weirdness and camp for the creative tastes of a more serious, more science-fiction flavored franchise two decades later.[75] Similarly, although Zahn's seminal novels and Dark Horse's *Dark Empire* comics each were developed with some tangential input from George Lucas before kicking off the Expanded Universe storytelling, the post-*Return of the Jedi* paratext generated by the novels quickly dominated the field. Although *Dark Empire* was never unceremoniously thrown in a vault or allowed to vanish into obscurity out of print, its key events, plot points, and characterization beats effectively dropped out of the paratext, rarely referenced or even alluded to by subsequent stories, especially compared to the large influence held by Zahn's *Thrawn Trilogy*.[76] Ironically, several of the most controversial elements of *Dark Empire*, which contributed to its back-benching during the Expanded Universe era—including a Luke Skywalker who brushes close to the dark side and the return of the not-actually-deceased Emperor Palpatine by means

74. In December 2020, Lucasfilm released *The LEGO Star Wars Holiday Special*, animated in the style of LEGO building sets, on the Disney+ streaming service, with brief acknowledgement of the original. *See* Dan Brooks, *Inside the Heart of the* LEGO Star Wars Holiday Special, StarWars.com (Oct. 15, 2020), https://www.starwars.com/news/inside-the-heart-of-the-lego-star-wars-holiday-special (quoting James Waugh, Lucasfilm vice president of Franchise Content & Strategy: "'It was completely anathema to talk about doing a holiday special within the halls of Lucasfilm for years,' . . . . 'But the truth is, it's part of our tapestry. It's part of our story. And fans have embraced it in a kind of ironic, fun way. . . . It's more honoring the elements of that holiday special that have lingered with the franchise.'").

75. *See* Star Wars on Trial: Science Fiction And Fantasy Writers Debate the Most Popular Science Fiction Films of All Time, 135-49 (Matthew Stover & David Brin, eds., 2006) (debating whether "*Star Wars* novels are poor substitutes for real science fiction and are driving real [science fiction] off the shelves"); *id*. at 217-232 (debating whether "*Star Wars* has dumbed down the perception of science fiction in the popular imagination").

76. *See, e.g*., Ryan Britt, *What* Star Wars: Dark Empire *Tells Us About* The Rise of Skywalker, Den of Geek (May 4, 2019), https://www.denofgeek.com/books/dark-empire-the-rise-of-skywalker/.

of a clone body—later reappeared in the Sequel Trilogy films.[77] Across the two decades of the *Star Wars* Expanded Universe, other instances can be found, as well.

The existence of these examples of disavowed *Star Wars* paratext serves to illustrate the point that a superstructure of paratext built around an underlying canon is unlikely ever to find perfect alignment with the text—or with the consensus interpretations and expectations created by the rest of the paratext. Just as certain officially licensed *Star Wars* paratext became ignored because ultimately it just didn't feel right as part of *Star Wars*, so too the Supreme Court's infamous "wrong" decisions stand out because they fail to align with normative judgments about what the Constitution—or what the United States of America—does or ought to stand for.

IV. THE IMPOSSIBILITY OF ERASING PARATEXT

Another dilemma shared by the *Star Wars* franchise and constitutional interpretation involves confronting a fundamental question posed by the ideas of text and paratext: does it even *matter* whether an idea or principle originates in text or paratext? In a definitional sense, of course, the distinction holds. For example, when a movie trailer includes a bit of content (such as an image, scene, or line of dialogue) which turns out not to be present in the final released film, that fact cannot change the categorization of the material contained within the film as the text of the story while the trailer content is paratext.[78] In a practical sense, however, perhaps it may not matter. To continue the example, if the absence of that trailer content in the final released film is jarring, confusing, or even disappointing, then the *experience* of the audience in receiving the text nevertheless can be affected, and sometimes the immediate reaction to—or even the subsequent interpretation of—the final text can be inextricably altered by the expectations or preconceptions shaped by the paratext.[79] The de-

77. *See, e.g.*, Jamie Lovett, Star Wars: The Rise of Skywalker*'s Biggest Ideas Happened First in a '90s* Star Wars *Comic*, COMICBOOK.COM (Dec. 23, 2019), https://comicbook.com/starwars/news/star-wars-the-rise-of-skywalker-dark-empire/.

78. *See* GRAY, *supra* note 12, at 47-52, 78-79. Among the recent *Star Wars* films, the *Rogue One* trailer in particular contained numerous scenes which did not appear in the final movie. *See* Tom Butler, Rogue One *trailer scenes that aren't in the movie*, YAHOO MOVIES UK (Dec. 13, 2016), https://uk.movies.yahoo.com/rogue-one-trailer-scenes-arent-slideshow-wp-170200810/photo-rogue-one-trailer-scenes-arent-photo-170200965.html (identifying and explaining twelve such shots from trailer).

79. *See* GRAY, *supra* note 12, at 63-72. A similar dynamic exists when a movie is adapted from a previous work, such as a novel or book series, where creators of the movie must account for expectations created by the source material. *See, e.g.*, *id*. at 119-25 (describing apprehension and anticipation by fans of *Lord of the Rings* book trilogy during production of Peter Jackson's movies); TRANSFORMING HARRY: THE ADAPTATION OF *HARRY POTTER* IN THE TRANSMEDIA AGE (John Alberti & P. Andrew Miller, eds.,

sire to enforce the conceptual separation between text and paratext is understandable, especially when the interpretation of fundamental principles of a canon is at stake, but both *Star Wars* and constitutional law suggest that maintaining the dichotomy ultimately is unsustainable.

A. Originalism's Ambition of Doctrinal Retrenchment

It is true that many of the iconic principles of U.S. constitutional law—freedom of speech, due process of law, the right to vote for our representatives, equality under the law—have grounding in the text of the Constitution. But it is equally true that nearly all of the implementing doctrines—rules and standards, famous and obscure—which actually give these principles their operative substantive legal effect are found in the decisions of the United States Supreme Court interpreting constitutional meaning. In 1954, the Court in *Brown v. Board of Education*[80] finally overruled *Plessy v. Ferguson*[81] and held unconstitutional racially segregated public schools: "in the field of public education the doctrine of 'separate but equal' has no place."[82] It took another forty years for the Court finally to definitively declare—in an opinion written by Justice Ruth Bader Ginsburg, only the second woman to ever serve on the Court—that discrimination on the basis of sex must be subject to "heightened scrutiny" under constitutional principles of equality.[83] In *Reynolds v. Sims*[84], the Court ruled that state legislatures must be apportioned on the basis of population, emphasizing that "[l]egislators represent people, not trees or acres."[85] Three years later in *Katz v. United States*[86], the Court required law enforcement agents to obtain search warrants before wiretapping or electronically eavesdropping on telephone conversations between private parties, even phone calls made from transparent phone booths on city streets: "the Fourth Amendment protects people, not places."[87] In between those two decisions came *Miranda v. Arizona*[88] and the now widely familiar advice-of-rights required of police before conducting

2018); Rebecca Wei Hsieh, *12 Movie Changes That Hurt* The Hunger Games *(And 8 That Saved It)*, ScreenRant (Jul. 9, 2018), https://screenrant.com/hunger-games-movie-changes-saved/.

80. 347 U.S. 483 (1954).
81. 163 U.S. 537 (1896).
82. Brown v. Board of Education, 347 U.S. 483, 495 (1954).
83. United States v. Virginia, 518 U.S. 515, 531-34 (1996).
84. 377 U.S. 533 (1964).
85. Reynolds v. Sims, 377 U.S. 533, 562 (1964).
86. 389 U.S. 347 (1967).
87. Katz v. United States, 389 U.S. 347, 351 (1967).
88. 384 U.S. 436 (1966).

custodial police interrogation.[89] The government cannot criminally prosecute the use or distribution of contraceptives,[90] compel individuals to salute the American flag or recite the Pledge of Allegiance,[91] or censor the use of crass language in public places.[92] The many other iconic examples are too numerous to list—though it is worth noting that many of them were handed down over objections from dissenting justices, including some, like *Miranda*, that were 5-4 decisions.

In almost every practical and realistic sense, it is these Supreme Court decisions—the paratext built upon the underlying text of the Constitution—that define and circumscribe U.S. constitutional law. Many Americans, including many lawyers, would find it difficult to imagine what U.S. constitutional law would be like without this paratext providing the implementing doctrine and rhetoric to support and enforce the sparse underlying text.

Yet the ambition of originalism as a constitutional theory deliberately was to call into question much of this familiar and valued paratext. Some early thought in what became the modern originalist movement arose in the context of providing arguments for the unconstitutionality of New Deal legislation, but the prominence of originalism surged after *Brown v. Board of Education* based on the contention that the original meaning of the Fourteenth Amendment permitted, rather than abolished, racial segregation.[93] Eventually originalism became the primary constitutional theory offered by political conservatives in opposition to a wide variety of Court decisions on liberty and equality from the 1950s to the 1970s, ultimately becoming a lodestar, if not litmus test, for Supreme Court appointments by Republican presidents for the past forty years.[94] Although originalism has been promoted in public discourse and scholarly work as a principled and limiting constitutional theory—in (purported) contrast to the (supposedly) unprincipled and unrestrained decision-making by the (usually) politically liberal justices on the Court—the actual doctrinal conse-

89. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

90. Griswold v. Connecticut, 381 U.S. 479, 484 (1965); *see also* Eisenstadt v. Baird, 405 U.S. 438, 438-39 (1972); Carey v. Population Servs. Int'l., 431 U.S. 678, 701-02 (1977).

91. W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

92. Cohen v. California, 403 U.S. 15, 26 (1971).

93. *See, e.g.*, SEGALL, *supra* note 32, at 51, 60, 111.

94. *See, e.g.*, Emily Bazelon, *How Will Trump's Supreme Court Remake America?*, N.Y. TIMES MAG. (Feb. 27, 2020), https://www.nytimes.com/2020/02/27/magazine/how-will-trumps-supreme-court-remake-america.html; SEGALL, *supra* note 32, at 52, 56, 62, 65, 73, 98, 113, 174, 180; Whittington, *supra* note 58, at 599-601, 603-05; *see also, e.g.*, KEN I. KERSCH, CONSERVATIVES AND THE CONSTITUTION: IMAGINING CONSTITUTIONAL RESTORATION IN THE HEYDAY OF AMERICAN LIBERALISM (2019); STEVEN M. TELES, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW (2010).

quences of implementing originalism in U.S. constitutional law would be equally enormous, and probably more impactful and disruptive, than the Court's decades-long creation of the existing body of paratext.[95]

For this reason, many originalist thinkers seek to find ways to avoid what surely would be widely unpopular consequences of originalism. Robert Bork, one of the most prominent originalists of the 1970s-80s, claimed that *Brown* was defensible on originalist grounds.[96] Justice Scalia conceded that he practiced a "faint-hearted" originalism that paid far more deference to *stare decisis* in practice than the underlying theory conceptually supported.[97] When the Supreme Court was presented in 2000 with a case in which the parties briefed and argued whether *Miranda* should be overruled—a position that five sitting justices had expressly or impliedly taken in previous cases—the Court ultimately reaffirmed *Miranda* by a 7-2 majority.[98] Recent scholarship from self-described originalists has asserted that case law on topics such as sex discrimination and same-sex marriage is defensible on originalist grounds—which is, to be charitable, implausible if the methodology is truly originalist.[99] In the end, while the conceptual force of originalism was intended to repudiate a wide swath of United States Supreme Court precedent, the reality has been that many originalists have been wary of taking their constitutional theory to its logical conclusion, functionally conceding to the ongoing stability of much of the Court's paratext.

To be clear, and to be fair, originalists are not the only ones who take objection to Supreme Court decisions adopting paratext they dis-

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95. *See, e.g.*, SEGALL, *supra* note 32, at xiv-xv (foreword by Erwin Chemerinsky).

96. *See* ROBERT H. BORK, THE TEMPTING OF AMERICA 82 (1990). Bork's nomination to the Supreme Court by President Reagan, a Republican, in 1987 was rejected 42-58 by the Democratic majority in the U.S. Senate in significant part because of Bork's strident defense of originalism; the seat was filled the next year by Anthony Kennedy, who did not hold such views and was confirmed unanimously. In hindsight, it might seem odd that Justice Scalia, by far the most visible proponent of originalism on the Court, also had been confirmed unanimously in 1986, but at the time of his confirmation hearings he had been far less vocal and controversial than Bork. *See generally, e.g.*, SEGALL, *supra* note 32, at 76-81.

97. Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CINCI. L. REV. 849, 864 (1989); *see also* Randy Barnett, *Scalia's Infidelity: A Critique of Faint-Hearted Originalism*, 75 U. CINCI. L. REV. 7, 13 (2006), *quoted in* SEGALL, *supra* note 32, at 122 ("I would conclude from his Taft Lecture and his behavior on the Court that Justice Scalia is simply not an originalist.").

98. *See* Dickerson v. United States, 530 U.S. 428, 431-32 (2000) (opinion of the Court by Rehnquist, C.J.); *id.* at 445-46 (Scalia, J., dissenting, joined by Thomas, J.) (emphasis in original) (citing previous opinions written or joined by Chief Justice Rehnquist, Justice Kennedy, and Justice O'Connor) ("Justices whose votes are needed to compose today's majority are on record as believing that a violation of *Miranda* is *not* a violation of the Constitution.").

99. SEGALL, *supra* note 32, at 104-115.

agree with or even stridently oppose. Regardless of one's political views or constitutional values, it is likely that multiple important Court decisions are troublesome. Whether *Roe v. Wade*[100] should be restored to more vibrant protection or overruled entirely is perhaps the most divisive ongoing controversy over the Court's case law in many decades.[101] Proponents of absolutist protection for free speech rights support the Court's decision in *Citizens United v. United States*,[102] granting corporations a First Amendment right to spend money on political speech, while others criticize and condemn the consequences of corporate and "dark money" influence on the electoral process.[103] The Court's decisions in *Shelby County v. Holder*,[104] *District of Columbia v. Heller*,[105] and *Burwell v. Hobby Lobby*[106] are opposed by many political liberals; the decisions in *Massachusetts v. EPA*[107] and *Obergefell v. Hodges*[108] are opposed by many political conservatives. What all of these topics and disputes share, however, is the reality that they are addressed not to the text of the Constitution, but to the Supreme Court's paratext of constitutional law.

B. *Star Wars*' Ambition of a Single Continuity

The collapse of the distinction between text and paratext is even more acute in *Star Wars* because franchise messaging, over the span of many years, was at best inconsistent or confusing and sometimes even deliberately conflated the two categories. Interestingly, the internal policies at Lucasfilm did not waver: the *Star Wars* movies (and later *The Clone Wars*) created by George Lucas held the position of text, while all other *Star Wars* material was paratext and accordingly subject to being ignored, overwritten, or co-opted by Lucas at any time.[109] But the manner in which *Star Wars* was marketed and de-

100. 410 U.S. 113 (1973).

101. *See, e.g.*, Mary Ziegler, Abortion and the Law in America: *Roe v. Wade* to the Present (2020); Mary Ziegler, After *Roe*: The Lost History of the Abortion Debate (2015).

102. 558 U.S. 310 (2010).

103. *See, e.g.*, Jane Mayer, Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right (2016); Susanna Kim Ripken, *Corporate First Amendment Rights After* Citizens United*: An Analysis of the Popular Movement to End the Constitutional Personhood of Corporations*, 14 U. Pa. J. Bus. L. 209 (2011); Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).

104. 570 U.S. 529 (2013).

105. 554 U.S. 570 (2018).

106. 573 U.S. 682 (2014).

107. 549 U.S. 497 (2007).

108. 576 U.S. 644 (2015).

109. *See* Pablo Hidalgo, *Star Wars*: The Essential Reader's Companion (2012). In the prefatory section captioned "Canon and Continuity," Hidalgo describes this long-standing policy: "The most definitive canon of the *Star Wars* universe is encompassed by the feature films and television productions in which George Lucas is directly in-

scribed to its audience, customers, and fans often portrayed a different picture. Part of the responsibility for this miscommunication lies with Lucasfilm itself, and the rest with the licensees who produced the great majority of the paratext, and particularly the paratextual Expanded Universe lore and storytelling.

For about twenty years prior to 2014, the *Star Wars* franchise promoted the idea of a "single continuity" as a distinctive feature of its story universe.[110] On the one hand, this served to set *Star Wars* apart from other prominent franchises in the genre storytelling milieu. Unlike superhero comics from Marvel or DC Comics, *Star Wars* stories did not take place in a multiverse with alternate versions of iconic characters, did not bring characters back from the dead after killing them off, and did not reboot storylines to reset character arcs and plot arcs to enable multiple iterations of origin stories.[111] Unlike *Star*

volved. . . . But Lucas allows for an Expanded Universe that exists parallel to the one he directly oversees." *Id*. at ix. On the same page, Hidalgo describes the *Star Wars* Expanded Universe continuity as "a living document that grows and evolves over time." *Id*. In a later chapter introduction addressing the initial Expanded Universe material telling Clone Wars stories and the subsequent *The Clone Wars* television series, Hidalgo writes: "In some notable cases, these early stories did not align with the version of events that would later be established by George Lucas and his team at Lucasfilm Animation. Some differences have proven more irreconcilable than others, and are noted where appropriate. . . . As always, a story line direct from George Lucas trumps publishing continuity." *Id.* at 75; *see also The Legendary* Star Wars *Expanded Universe Turns a New Page*, StarWars.com (Apr. 25, 2014), https://www.starwars.com/news/the-legendary-star-wars-expanded-universe-turns-a-new-page ("While Lucasfilm always strived to keep the stories created for the EU consistent with our film and television content as well as internally consistent, Lucas always made it clear that he was not beholden to the EU. . . . [His] stories are the immovable objects of *Star Wars* history, the characters and events to which all other tales must align."). Previously an employee in the online and licensing divisions, in 2012 Hidalgo was selected as an original member of the Lucasfilm Story Group; within a few years, he came to be viewed as the "Lucasfilm creative team's public face" on social media. Golding, *supra* note 25 at 199; *see also* Taylor, *supra* note 25, at 389-90, 410-13 (discussing Hidalgo's roles at Lucasfilm over time).

110. *See, e.g.*, Matthew Freeman, *Rebuilding Transmedia* Star Wars*: Strategies of Branding and Unbranding a Galaxy Far, Far Away*, *in* Disney's *Star Wars*, *supra* note 25, at 23; B.J. Priester, *Path Dependence in* Star Wars *Storytelling*, FANgirl Blog (Aug. 2014), http://fangirlblog.com/2014/08/path-dependence-in-star-wars-storytelling/; B.J. Priester, *Resurrecting Legends: Is the* Star Wars *Reboot Gendered?*, FANgirl Blog (Feb. 2017), http://fangirlblog.com/2017/02/resurrecting-legends-star-wars-reboot-gendered/.

111. *See, e.g.*, Cocca, *supra* note 46 (discussing examples of comic book superheroine reboots including Batgirl and Wonder Woman at DC and Captain Marvel and the X-Men at Marvel). In *The Phantom Menace*, Darth Maul is bisected at the waist by Obi-Wan Kenobi during the movie's climatic battles, and paratextual materials released at the time treated him as having been killed. Subsequently, Lucas returned Maul into the *Star Wars* timeline for *The Clone Wars* animated series (and he then appeared in later stories, as well, including *Star Wars Rebels* and *Solo*). Although it contradicted the preceding paratext, the context of his return in the canonical text of *The Clone Wars* expressly established that Maul had never actually died in the first place, but rather had survived all along with help from the unnatural powers offered the dark side of the Force.

Trek, where the films and television series had primacy and the licensed novels had no binding effect on other stories, in *Star Wars* each subsequent novel or comic had to account for and conform with not only Lucas' works, but also the rest of the extant Expanded Universe material, as well.[112] Lucasfilm and its licensees apparently believed—the evidentiary basis for which has never been clear—that the existence and maintenance of this distinguishing single continuity provided value-added to *Star Wars* as a franchise, resulting in higher sales than otherwise would occur.[113] Many *Star Wars* Expanded Universe fans came to accept this franchise conventional wisdom as received truth, creating a fandom dynamic in which the perceived necessity of maintaining the single continuity became self-reinforcing between the Expanded Universe segment of the franchise and many of its most reliable customers.[114]

On the other hand, the "single continuity" principle also created expectations that Lucasfilm was closely monitoring the integrity, coherence, and compliance of the various components of the Expanded Universe to ensure a seamless and integrated past, present, and future for the story universe. For example, fans became aware of the "Holocron" database, named after the devices used to archive knowledge and secrets of the Jedi Order. Begun in January of 2000 and containing tens of thousands of entries, Lucasfilm uses the Holocron to track all manner of details about the *Star Wars* universe, from character traits and the events in their story lives to planets, aliens, starships, weapons, flora and fauna, and more.[115] Awareness of the Holocron led to an environment in which consternation could be predicted whenever fans identified a "continuity error"—whether substantial or inconsequential—in a piece of newly released material. How had the error slipped through? Why hadn't it been caught and corrected? How would the error be rectified in future material? This in turn created something of a cottage industry of fans dedicated to proposing "fixes" for these "errors," ranging from the creative or clever to the exceedingly contrived. Some of these fans successfully parlayed their deep knowledge of the lore and ability to negotiate the most obscure minutiae into official contributions to the Expanded Universe—

112. *See, e.g.*, Lee Hutchinson, *Op-ed:* Star Trek*'s expanded universe is a glorious mess*, ARS TECHNICA (Jan. 1, 2014), https://arstechnica.com/gadgets/2014/01/op-ed-star-treks-expanded-universe-is-a-glorious-mess/.

113. *See, e.g.*, Chris Baker, *Meet Leland Chee, the Star Wars Franchise Continuity Cop*, WIRED (Aug. 18, 2008), https://www.wired.com/2008/08/ff-starwarscanon/ ("To Chee, the orderliness of the *Star Wars* canon is what sets it apart, what makes it feel more real than all those other franchises.").

114. *See, e.g.*, Priester, *Path Dependence*, *supra* note 91.

115. *See* TAYLOR, *supra* note 25, at 339; Leland Y. Chee, *What is the Holocron?*, STARWARS.COM (July 20, 2012), https://www.starwars.com/news/what-is-the-holocron.

including the ability to add new paratext to account for perceived problems with existing paratext.[116] Such a description might sound familiar to scholars of constitutional law and constitutional theory, as well.

Needless to say, these high expectations for the idea of a *Star Wars* single continuity turned out to be unrealistic—and unmet. Even within the Expanded Universe itself, consistency of encyclopedic lore proved elusive, and consistency of characterization even more so.[117] More importantly, the interaction between text and paratext never aligned with the "single continuity" messaging. Fortunately, George Lucas had long since instructed his Lucasfilm team to keep the pre-Original Trilogy backstory off limits; for example, in the Expanded Universe stories Luke and Leia did not learn the true identity of their birth mother until 2005, after the release of *Revenge of the Sith* had completed the story of Anakin Skywalker and Padmé Amidala.[118] This kept small the number of conflicts between the Prequel Trilogy and the pre-1999 Expanded Universe, and it was fairly easy to distinguish or discount the now-obsolete details.[119] Even Lucas' decision in *Attack of the Clones* to create a backstory for Boba Fett, who had previously not been off limits, did not cause major disruptions to the Expanded Universe, which quickly reconciled multiple accounts of the bounty hunter's origins by means of an in-universe shroud of mystery suitable to a Wild West outlaw style character.[120]

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116. *See* Tricia Barr, *What Exactly is an Uberfanboy?*, FANGIRL BLOG (Apr. 25, 2011), http://fangirlblog.com/2011/04/what-exactly-is-an-uberfanboy/; SUZANNE SCOTT, FAKE GEEK GIRLS: FANDOM, GENDER, AND THE CONVERGENCE CULTURE INDUSTRY 144-183 (2019) (discussing "fanboy auteurs" and "fantrepreneurs" in media fandom).

117. *See, e.g.*, Tricia Barr, *Fangirl Speaks Up:* Star Wars *Books and Me—Caught in a Bad Romance*, FANGIRL BLOG (Feb. 2011), http://fangirlblog.com/2011/02/fangirl-speaks-up-star-wars-books-bad-romance/; Tricia Barr, *Fangirl Speaks Up: The Missing Demographic*, FANGIRL BLOG (Feb. 2011), http://fangirlblog.com/2011/02/fangirl-speaks-up-fanfic/; Barr, *Uberfanboy*, *supra* note 97.

118. In 1996-97, the *Black Fleet Crisis* trilogy by Michael P. Kube-McDowell included a subplot in which Luke Skywalker undertook a mission with a woman who claimed she could help him discover information about his mother, but who turned out to have been deceiving him to obtain his aid for her own purposes. Over thirty in-universe years after the Battle of Endor, Luke and Leia finally learned the truth about Padmé's fate by recovering data from the memory banks of R2-D2 in *The Swarm War* by Troy Denning, published in December 2005 following the release of Episode III in May.

119. The most noticeable inconsistencies related to information concerning the Clone Wars, some of which occurred because George Lucas altered his sparse Original Trilogy backstory ideas about the timing and nature of the war while writing the Prequels. *See, e.g.*, Matt Morrison, *The Clone Wars Were Weirder Before The* Star Wars *Prequels*, SCREENRANT (Nov. 3, 2018), https://screenrant.com/star-wars-clone-wars-before-prequels/.

120. *See, e.g.*, Thomas Bacon, Star Wars *Gave Boba Fett A REAL Name (But Lucas Changed It)*, SCREENRANT (Sep. 5, 2019), https://screenrant.com/star-wars-boba-fett-name-jaster-mereel-retcon/; Megan Crouse, Star Wars*: 10 Boba Fett Facts You Might Not Know*, DEN OF GEEK (Dec. 18, 2019), https://www.denofgeek.com/movies/star-wars-

Only a few years later in 2008, though, Lucas' animated series *The Clone Wars* metaphorically began to drive a bulldozer through the extensive, interconnected, multimedia Expanded Universe version of the war that had been released from 2002 to 2005. Some fans clamored for Lucasfilm to require Lucas to conform to the existing Expanded Universe—an impossibility, naturally, because that was not, and had never been, the franchise's relationship between text and paratext.[121] Other fans pressed the stewards of the Expanded Universe for explanations of how the existing material would be reconciled with and conformed to the new Lucas material[122]—the accurate framing, but still seeking devotion to a single franchise continuity that, as a practical matter, no longer existed. During the early seasons of *The Clone Wars*, employees of Lucasfilm repeatedly indicated publicly that the company internally had developed an ongoing timeline which reconciled the Expanded Universe and Lucas' versions of the war, but that it could not be released to fans until the television series was completed (and, in the end, no such timeline was ever published).[123] One Expanded Universe author, Karen Traviss, who at that point had written ten *Star Wars* novels and built a dedicated base

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boba-fett-facts/; Tom Hutchens, *Mandalorian Mysteries: Who Was Jaster Mereel?*, STARWARS.COM (May 4, 2014), https://www.starwars.com/news/mandalorian-mysteries-who-was-jaster-mereel.

121. *See* Dunc, *"You came in that thing? You're braver than I thought." Canon, continuity, and the Expanded Universe*, CLUBJADE (Apr. 25, 2011), https://clubjade.net/you-came-in-that-thing-youre-braver-than-i-thought-canon-continuity-and-the-expanded-universe/ (describing online fan petition "asking that Lucasfilm respect what's already been established in [Expanded Universe] continuity before overwriting it" in *The Clone Wars*, and quoting response by Leland Chee). Fans aware of Lucasfilm's public statements about the Holocron understood that the database encompassed the distinction: descriptively, information from the movies was labeled as "G-canon" (i.e., George) while information from the Expanded Universe was labeled as "C-canon" (i.e., Continuity); normatively, in the event of a conflict requiring resolution for purposes of a story or other franchise product, the G-level information was dispositive for Lucasfilm or its licensees. *See, e.g.*, *Canon*, WOOKIEEPEDIA, https://starwars.fandom.com/wiki/Canon (explaining distinction and quoting comments from Lucasfilm employees).

122. *See, e.g.*, Leland Chee, *Chronicling the Clone Wars*, STARWARS.COM (Sep. 14, 2012), https://www.starwars.com/news/chronicling-the-clone-wars/ ("Without a doubt, the most often asked question I've been asked since *The Clone Wars* started four years ago is, 'How does *The Clone Wars* fit into the existing Expanded Universe Clone Wars timeline?'").

123. *See, e.g.*, Leland Chee (@HolocronKeeper), TWITTER (Aug. 10, 2009, 11:00), https://twitter.com/HolocronKeeper/status/3226162684 ("To clarify, the Clone Wars TIMELINE won't get untangled until we reach the end of the series. Untangling other stuff is ongoing."); *Star Wars: The Clone Wars (TV series)*, WOOKIEEPEDIA, https://starwars.fandom.com/wiki/Star_Wars:_The_Clone_Wars_(TV_series) (last visited July 1, 2020) (noting that events in the animated series "directly contradict previously published [Expanded Universe] sources and require retcons and major shifts in the previously established Clone Wars timeline, which were never determined" and citing public statements by Lucasfilm employees who "maintained that the complications would eventually be worked out").

of fans around her work, quit working for the franchise. Traviss publicly explained the reasons on her blog: to continue writing for *Star Wars*, she would have been required to abandon the lore and ideas she had created for the Mandalorian culture, and instead conform in future stories to the new and different lore set out by Lucas in *The Clone Wars* series, a condition that Lucasfilm was entitled to impose but that Traviss had no interest in accepting.[124] Years before it became official, the *Star Wars* single continuity was already dead.

The acquisition of Lucasfilm by Disney in late 2012 could have led to a reevaluation of the premise that *Star Wars* should rely on a single continuity as a key franchise messaging point. Instead, the franchise doubled-down on the idea—only to quickly discover that its new continuity generated more problems faster than the old one had. With the first Disney-era *Star Wars* film scheduled for release in December 2015, Lucasfilm officially announced in April 2014 that the Expanded Universe would be rebranded as *Star Wars Legends* and would not form the basis for ongoing or upcoming *Star Wars* storytelling.[125] For a wide variety of reasons, this was a wise move for the franchise, and it generated only a small amount of angry backlash from the fandom.[126] In the very same announcement, however, Lucasfilm also

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124. *See* Karen Traviss, *Why Have You Stopped Writing for* Star Wars? (Dec. 2009), http://www.karentraviss.com/page22/files/Why_have_you_stopped_writing_St.html ("The series itself was brought to a premature end by changes in official canon that were beyond my control.").

125. *See Legendary* Star Wars *Expanded Universe*, *supra* note 90 ("In order to give maximum creative freedom to the filmmakers and also preserve an element of surprise and discovery for the audience, *Star Wars* Episodes VII-IX will not tell the same story told in the post-*Return of the Jedi* Expanded Universe."). Although the *Star Wars Legends* stories have not been continued or directly adapted since 2014, much of the lore generated by those materials remains in place. *See, e.g.*, Priester, *Resurrecting Legends*, *supra* note 91. For example, Lucasfilm continues to use the same galactic map created during the Expanded Universe era, and chose not to rename the multitude of aliens, species, vehicles, and technology from decades of *Star Wars* material. The animated television series *Star Wars Rebels* incorporated a number of starships, planets, and other elements from *Legends* sources. The *Rebels* series also reintroduced a fan-favorite character from the *Legends* stories, the Imperial grand admiral named Thrawn, which later led to new novels by Timothy Zahn involving the character's new Disney-era incarnation rather than the prior *Legends* incarnation. Lucasfilm messaged this return more carefully, ensuring that fans understood that the presence of the character in new stories did not carry forward any of the stories or other characters from the *Legends* tales in which Thrawn had appeared. *See* Tobias Kent, *"It's True, All of It!" Canonicity and Character Identity in* Star Wars, IMAGE (SPECIAL ISSUE), Jan. 2019, at 60, http://www.gib.uni-tuebingen.de/image/ausgaben-3?function=fnArticle&showArticle=519.

126. *See* Michelle Kent, *"You Die! You Know That Right? You Don't Come Back!": Fans Negotiating Disney's (De)Stabilized* Star Wars *Canon*, *in* DISNEY'S *Star Wars*, *supra* note 25, at 221; *see also, e.g.*, Dunc, *Star Wars Books shuts down Facebook page to spare fans movie spoilers from disgruntled Legends backers*, CLUBJADE (Dec. 16, 2015), https://clubjade.net/star-wars-books-shuts-down-facebook-page-to-spare-fans-movie-spoilers/; Eric Geller, *Anger Leads To Hate: Inside The Movement To Save The Expanded Universe*, THEFORCE.NET (Oct. 7, 2014), http://www.theforce.net/story/front/An-

expressed its intention to have its "Story Group" implement an *even more* integrated single continuity than ever before; instead of movie text and the rest paratext, *everything* would be text.[127] Going forward, not only would the *Star Wars* movies and television series have canonical weight, but so too would novels, comics, and other storytelling.

Unsurprisingly, this ambitious idea quickly collapsed under the realities of the production process for *Star Wars* stories. Four of the first five new *Star Wars* movies—directed and written by a total of 14 men rather than the unitary guidance of George Lucas[128]—involved reshoots, pickup filming, and editing until the very last days before the films needed to be locked for release,[129] resulting in numerous instances where information previously provided for use in novels, comics, reference books, or other materials turned out not to align with the final movie. With Poe Dameron alone, for example, the *Star Wars* movies, books, and comics have given inconsistent accounts of his backstory before joining the Resistance and when and how many

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ger_Leads_To_Hate_Inside_The_Movement_To_Save_The_Expanded_Universe_160167.asp; Jacob Hall, *'Star Wars' Fans Bought a Billboard Demanding the Return of the Expanded Universe*, /FILM (Apr. 20, 2016), https://www.slashfilm.com/star-wars-billboard/.

127. *See Legendary* Star Wars *Expanded Universe*, *supra* note 90 ("[T]he company for the first time ever has formed a story group to oversee and coordinate all *Star Wars* creative development. . . . And this is just the beginning of a creatively aligned program of *Star Wars* storytelling created by the collaboration of incredibly talented people united by their love of that galaxy far, far away. . . .").

128. Directors included J.J. Abrams (*The Force Awakens* and *The Rise of Skywalker*), Gareth Edwards (*Rogue One*), Rian Johnson (*The Last Jedi*), and Phil Lord, Chris Miller, and Ron Howard (*Solo*). Credits for story or screenplay included Abrams and Johnson, as well as Michael Arndt (*The Force Awakens*), Lawrence Kasdan (*The Force Awakens* and *Solo*), John Knoll, Gary Whitta, Chris Weitz, and Tony Gilroy (*Rogue One*), Jon Kasdan (*Solo*), and Chris Terrio (*The Rise of Skywalker*). For the six movies in the Original Trilogy and Prequel Trilogy, Lucas directed four (*A New Hope* and the three Prequels) and had sole or shared screenplay credit on five, with "story by" credit on the other (*The Empire Strikes Back*).

129. Of the five films, only *The Last Jedi* was completed well in advance, three months ahead of theatrical release. *See* Devan Coggan, Star Wars: The Last Jedi *has officially wrapped, says director Rian Johnson*, ENTERTAINMENT WEEKLY (Sep. 22, 2017), https://ew.com/movies/2017/09/22/star-wars-last-jedi-wrapped-rian-johnson/; *cf., e.g.*, Tom Butler, Rogue One*'s editors reveal the scenes added in the* Star Wars *standalone reshoots (exclusive)*, YAHOO MOVIES UK (Jan. 3, 2017), https://uk.movies.yahoo.com/rogue-ones-editors-reveal-scenes-added-in-the-star-wars-standalone-reshoots-exclusive-110124381.html; Kristopher Tapley, *Inside 'Solo': A 'Star Wars' Story's Bumpy Ride to the Big Screen*, VARIETY (May 22, 2018), https://variety.com/2018/film/features/solo-a-star-wars-story-directors-reshoots-ron-howard-1202817841/; Katherine Webb, *Wow,* Star Wars: The Rise Of Skywalker *Had Months Less Time Than* The Force Awakens, CINEMABLEND (Jan. 5, 2020), https://www.cinemablend.com/news/2487812/wow-star-wars-the-rise-of-skywalker-had-months-less-time-than-the-force-awakens.

times he interacted with Lor San Tekka on Leia Organa's behalf.[130] After five years, the Story Group had been unable to exceed, and arguably fared worse than, the previous system of *Star Wars* text and paratext.

Multiple times over three decades, Lucasfilm sought to rely upon a distinction between text and paratext to redefine the interpretive boundaries of the *Star Wars* canon. Each time, the stewards of the franchise discovered to their consternation that the meaning of *Star Wars* to the overall fan interpretive community—encompassing the highly engaged base of dedicated fans as well as the impressions and understandings held by the broader general audience—could not be cleanly disaggregated into text and paratext. Lucasfilm may own *Star Wars* and the corresponding legal rights to produce official works and licensed derivative works, but the *meaning* of *Star Wars* has long since passed beyond its exclusive corporate control.

V. CONCLUSION

The comparison between constitutional interpretation and the concept of media paratext demonstrates the impossibility of any aspiration to sever the interpretation of an iconic text from the full range of associated materials that unavoidably inform our understanding of it. Despite protestations or pretensions to the contrary, the canonical meanings of a text—whether in the *Star Wars* franchise or in U.S. constitutional law—inevitably are shaped and reshaped by the interpretive influence of paratext. In the end, the conceit of a consistent and enforceable single continuity for the fictional *Star Wars* universe proved to be a fiction of its own, too. In U.S. constitutional theory, the goal of creating a single method of interpretation capable of generating a consistent, reliable, and uncontroversial set of paratext is another such fiction—and so too is the notion of a reboot, a kind of doctrinal clean slate or fresh start, in which only originalist paratext governs the interpretive meaning of the constitutional text. Just as

130. For four years, materials portrayed Poe Dameron as a career military officer with lifelong dedication first to the New Republic and then to the Resistance. *See, e.g.*, GREG RUCKA, STAR WARS: BEFORE THE AWAKENING (2015); CHARLES SOULE, STAR WARS: POE DAMERON (vols. 1-7, 2016-2018); Tom Taylor, *Age of Resistance—Poe Dameron #1* (Marvel Comics, Aug. 29, 2019). The film *The Rise of Skywalker*, by contrast, abruptly indicated that Dameron had been a "spice runner" (i.e., illegal narcotics smuggler) at some point in his youth. *See* PABLO HIDALGO, STAR WARS: THE RISE OF SKYWALKER: THE VISUAL DICTIONARY 90-91 (2019) (addressing discrepancy by indicating Dameron "ran away from home" for a period before enlisting in the New Republic military). The inconsistency involving Lor San Tekka appears in the books and comics. *Compare* MICHAEL KOGGE, POE DAMERON: FLIGHT LOG (2016) (Dameron has never met San Tekka before the events of *The Force Awakens*), *with* SOULE, *supra*, (vol. 4, 2018) (Dameron rescues and conducts a lengthy escape with San Tekka during a mission prior to *The Force Awakens*).

Lucasfilm cannot control how *Star Wars* is given meaning by the interpretive community built up around the franchise, the interpretive community built up around the U.S. Constitution is too large and too longstanding for any single interpretive perspective to demand exclusivity in accuracy, much less legitimacy. Constitutional law is paratext—the kind that has long since overtaken its text.