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A Grammar of Legal Thought

How to Do Things with Legal Doctrine

Pierre Schlag & Amy J. Griffin (U. Chicago Press), 207 pages

Derek H. Kiernan-Johnson, rev'r*

“Just how does one do doctrine?”¹ The authors of *How to Do Things with Legal Doctrine*, a collaboration of two law professors, one who specializes in constitutional law, and one who specializes in legal writing,² aim to answer that question. Those who work with the law know “doctrine” as a “rule, principle, theory or tenet of the law.”³ The book is a taut, comprehensive guide for how to, well, do things with doctrine. More precisely, it’s a guide for how to *continue* to do things with doctrine—just more consciously and systematically. For the problem, the authors argue, isn’t that lawyers, judges, and law professors aren’t already doing things with doctrine (quite the opposite) but that we aren’t aware that this is even a choice. We skip past the step of conceiving of law *as doctrine*, to jump right into analyzing or arguing about the (doctrinal) substance of a particular matter.

The authors don’t argue (at least here) for a primary conception of law other than as doctrine. Their task is descriptive: to catalogue all the “recurrent structures and moves across the corpus of the law” so that they “can be taught and learned.”⁴ The book is thus, to this reviewer, akin to a linguistic “reference grammar.”⁵

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¹ PIERRE SCHLAG & AMY J. GRIFFIN, *HOW TO DO THINGS WITH LEGAL DOCTRINE* 3 (2020).

² The authors, both on the Colorado Law faculty, are Pierre Schlag, University Distinguished Professor and Byron R. White Professor of Law, and Amy J. Griffin, Professor of Legal Writing and Associate Dean for Instructional Development.

³ SCHLAG & GRIFFIN, *supra* note 1, at 10 (citing *Doctrine*, BLACK’S LAW DICTIONARY (6th ed. 1990)).

⁴ *Id.* at 6, 180.

⁵ See, e.g., Irina Nikolavea, *Reference Grammars*, in HANDBOOKS OF LINGUISTICS AND COMMUNICATION SCIENCE, vol. 4 ch. 59 (Jeroen Darquennes & Patience Epps eds., 2015); SIL, *Reference Grammar*, in GLOSSARY OF LINGUISTIC TERMS (2003), <https://glossary.sil.org/term/reference-grammar>.

This grammar’s proposed taxonomy is extensive. The first chapter, for example, divides doctrine into four main components: artifacts, sources of law, functions, and elements. The first component, artifacts, is itself divided into seven parts: concepts, directives, principles, policies, values, considerations, and interests. This articulation continues through to the end, where a two-page table sets out nineteen “structural distinction clusters,” each cluster of which, as the name implies, involves a handful of different distinctions.⁶ Whew!

The authors admit that calling such a book “dense” is “an understatement.”⁷ They therefore structure it so that, while it could be read from start to finish (perhaps one chapter, or part of a chapter, at a sitting), it can also, like a grammar, serve as a teaching tool or reference text. Chapters stand alone and the Table of Contents is extensive.

One way to use the book, the authors hope, is as an “argument resource,” a “prompt,” or “checklist of possibilities and limitations.”⁸ Used this way, a brief writer struggling to craft a Question Presented might scan the table of contents and jump to Chapter 2, “Frames and Framing,” in particular Part I, “Entry-Framing.” A judge striving to distinguish a precedent on their way to articulate a holding might instead turn to Chapter 4, “The Legal Distinction,” and in that chapter focus especially on the three criteria for sound distinctions, trade-offs among these criteria, and how to craft a sound distinction in writing.

Law professors will also find the book useful, either as the textbook for a class on legal doctrine or as a resource for an existing doctrinal or writing course. Academic-support professionals might also find the book helpful. Both readers may wish to peruse the book’s 112-page supplement of exercises, which is available as a free PDF online.⁹ These exercises vary, intentionally, from focused prompts meant to spark class discussions, to longer hypotheticals for use as multi-week writing assignments. The authors have also written a “teacher’s manual of sorts” to pair with the exercises, which is available to educators (but not students) upon request.¹⁰

In sum, *How to do Things with Doctrine* is the reference grammar we didn’t know we needed. All of us who learned the language of the law through immersion could benefit from a deeper, more systematic under-

⁶ SCHLAG & GRIFFIN, *supra* note 1, at 160–61.

⁷ *Id.* at 7.

⁸ *Id.*

⁹ PIERRE SCHLAG & AMY J. GRIFFIN, *HOW TO HOW TO DO THINGS WITH LEGAL DOCTRINE: EXERCISES* (2020), https://press.uchicago.edu/sites/legal_doctrine/legal_doctrine_exercises.pdf.

¹⁰ *Id.* at 1.

standing of how that language is put together. While it isn't a breezy read (nor is it meant to be), this important book will reward the patient, attentive reader.

