

Reclaiming the Singular They in Legal Writing

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Introduction

Legal writing has a pronoun problem. The problem arises where a sentence calls for a generic pronoun to refer to a third-person singular generic noun. Generic nouns are gender-neutral, and include definite nouns such as “baker,” “lawyer,” or, as in the following sentence, “plaintiff.”¹ “When a plaintiff commences an action by service of process, _____ must also file the complaint with the court.” In the twentieth century, legal writers commonly filled the blank with *he*, or, *he or she*. Today, both of those pronouns are disfavored: the first as sexist,² the second as awkward.³

English speakers and writers commonly fill the blank with *they*, as in “they must also file the complaint with the court” or “Please ask

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¹ See DENNIS BARON, WHAT’S YOUR PRONOUN 153 (2020) (referring to a generic noun as a definite noun, and distinguishing definite nouns from indefinite nouns like “everyone” or “someone”); Greg Johnson, *Welcome to Our Gender-Neutral Future*, Vt. B.J., Fall 2016, at 36, 36. (“Generic nouns are those that can refer to either gender, as in, ‘A lawyer must always follow court rules when writing his brief.’”).

² Tom Cobb, *Embracing the Singular ‘They’*, NW LAW., May 2019, at 12, 14 (“Writers who continue to use ‘he’ in this way risk being seen as sexist, out of touch, or intentionally flouting usage norms to make a political point.”); see Ann Bodine, *Androcentrism in Prescriptive Grammar: Singular ‘They’, Sex-Indefinite ‘He’, and ‘He or She’*, 4 LANGUAGE IN SOC’Y 129, 129 (1975) (“[T]hird person pronoun usage will be affected by the current feminist opposition to sex-indefinite ‘he.’”); Judith D. Fischer, *Framing Gender: Federal Appellate Judges’ Choices About Gender-Neutral Language*, 43 U.S.F. L. REV. 473, 481 (2009) (“Studies reported a decline in the use of masculine nouns and pronouns as generics, with one study finding a notable decline in their use in American newspapers in magazines between 1971 and 1979.”).

³ H.W. FOWLER, A DICTIONARY OF MODERN ENGLISH USAGE 391–92 (1926); Cobb, *supra* note 2, at 15.

everyone what they want for lunch.”⁴ But legal writing does not recognize the existence of singular *they* when used as a singular generic pronoun: legal writing authorities, including textbook and legal writing style guide authors, almost universally label it ungrammatical and therefore not appropriate for formal writing.⁵ Thus, legal writing lacks a singular generic third-person pronoun to fill the blank, concluding that there is no solution that is grammatical, simple, and inclusive.⁶

The history of both common English usage and legal usage proves legal writing wrong. The use of the singular *they* predates⁷ even the emergence of modern English. But legal writing nevertheless pays homage to a later-created rule labeling the singular *they* as ungrammatical in order to institute the use of the masculine *he*. This effort was sexist at its inception, and for two hundred years succeeded in subordinating females to the role of second-class citizens within their own language. Today, legal writing authorities perpetuate that effort by refusing to acknowledge *they*: the only gender-neutral pronoun that is grammatical, simple, and inclusive.

As section I details, the singular *they* is grammatically correct, as it has been continuously used as a singular generic pronoun since the advent of modern English. Section II reveals that legal writing’s rejection of the singular *they* is based on obeisance to a later-instituted rule that was born from an androcentric effort to institute the masculine *he* as a gender-neutral pronoun. Putting aside the motivations of those who attempted to proscribe it, section III demonstrates that *they* functions effectively as a generic singular pronoun because it is not only grammatical, but also a simple and inclusive pronoun alternative to fill the blank. Section IV considers the potential ambiguities that may arise from the use of singular *they*. Such instances of ambiguity are rare, and mostly result not from the

4 See Cobb, *supra* note 2, at 14 (employing a similar example, “Please ask each of the witnesses what they want for lunch.”).

5 See ANNE ENQUIST, LAUREL OATES & JEREMY FRANCIS, *JUST WRITING* 631 (5th ed. 2017) (proscribing the singular *they* as a generic pronoun on the basis that it is “ungrammatical”); Heidi K. Brown, *Get with the Pronoun*, 17 *LEGAL COMM. & RHETORIC* 61, 73–75 (2020) (collecting examples of singular *they* proscriptions in legal writing usage guides and scholarship); Paul Salembier, *Is Bad Grammar Good Policy? Legislative Use of the Singular ‘They’*, 36 *STATUTE L. REV.* 175, 176 (2015) (“Among grammarians, however, the use of the singular *they* is generally acknowledged to be incorrect and is considered unacceptable in professional writing.”); see also *infra* notes 44–46.

6 This question of how to use the singular *they* as a generic pronoun to refer to a generic noun is analogous to, but not the same as, the question of how to use the singular *they* to refer to a known individual who employs *they* as a personal pronoun, as in the sentence, “Hayden achieved a lifelong ambition when they graduated from law school.” This article focuses on the use of singular *they* as a generic pronoun and will explain how generic pronouns and personal pronouns relate to one another. See *infra* section III.

7 This article uses italics when referring to the singular *they* as a concept and uses singular verb forms (“*they* functions”) in that context. However, when the singular *they* is employed in common usage as a generic singular pronoun, it is paired with plural verb forms. For example, in *Alice’s Adventures in Wonderland*, Lewis Carroll uses the plural “say” rather than the singular “says” when employing the singular *they*: “But how can you talk with a person if they always say the same thing?” See Robert D. Eagleson, *A Singular Use of They*, 5 *SCRIBES J. LEGAL WRITING* 87, 96 (1994–1995) (quoting LEWIS CARROLL, *ALICE’S ADVENTURES IN WONDERLAND* (1865)).

use of the singular *they* particularly, but of pronouns generally. In those limited instances, non-pronoun alternatives will clarify the writer's intent.

I. The singular they is as old as English itself

Grammar texts of the nineteenth and twentieth century insisted that English does not possess a third-person singular generic pronoun.⁸ But, as Dennis Baron's exhaustive historical scholarship reveals, *they* and its associated pronouns *them* and *their* have functioned both as third-person plural pronouns and as third-person singular generic pronouns for as long as modern English has been spoken and written.⁹

The *Oxford English Dictionary* records the use of singular *they* to refer to a generic singular noun as early as the fourteenth century, in a middle English romance tale entitled *William and the Werewolf*. "Hastely hized eche . . . þei neyþ ed so neizh . . . þere william & his worþi lef were liand i-fere." Translated to modern English, the sentence reads, "Each man hurried . . . till they drew near . . . where William and his darling were lying together."¹⁰ As exemplars of English from the period are sparse, it is likely that singular *they* had already been in use in middle English for some time prior.¹¹

For several centuries, as middle English gave way to modern English, *they* was commonly and continuously used both as a plural and singular pronoun.¹² Examples of the use of *they*, *them*, and *their* as generic singular pronouns are legion. Appendix A catalogs numerous usages, including the following instances.

8 Bodine, *supra* note 2, at 130 ("There is a tradition among some grammarians to lament the fact that English has no sex-indefinite pronoun for third person singular.").

9 *They* appeared as a pronoun in Middle English, having originated in Old Norse, the language of the conquering Vikings. As Dennis Baron describes it, "English speakers must have found the pronoun they really useful or they wouldn't have borrowed it from the language of their enemies." BARON, *supra* note 1, at 151.

10 Dennis Baron, *A Brief History of Singular 'They'*, *Oxford English Dictionary* (Sept. 4, 2018), <https://public.oed.com/blog/a-brief-history-of-singular-they>.

11 *Id.* ("Since forms may exist in speech long before they're written down, it's likely that singular they was common even before the late fourteenth century. That makes an old form even older."); Eagleson, *supra* note 7, at 89 ("The entries from the *Oxford English Dictionary* forcefully demonstrate that the use of they to refer to a singular noun is not an innovation of recent decades or even of this century. The earliest citation is from the 14th century, so we know that the practice had been adopted in writing at least by then. There may have been much earlier examples that have been lost, and the practice may well have been established in speech before it found its way into writing. In adopting they with singular reference, we are simply following a long-established convention of the English language.")

12 Debora Schweikart, *The Gender Neutral Pronoun Redefined*, 20 *WOMEN'S RTS. L. REP.* 1, 6 (1998) ("Gender neutral pronouns preceded pseudogeneric 'he' and are still common in the English language. Prior to the nineteenth century, English writers widely employed singular 'they' as a gender neutral pronoun.")

- No one in the whole country was brave enough to oppose them, because they were so afraid of them.
—Three Kings of Cologne (c. 1400) (translated to modern English from Middle English)¹³
- So likewise shall my heavenly Father do also unto you, if ye from your hearts forgive not everyone his brother their trespasses.
—The Bible (King James Version 1611)¹⁴
- A person can't help their birth.
—Vanity Fair by William Thackeray (1848)¹⁵
- No American should ever live under a cloud of suspicion just because of what they look like.
—Barack Obama (2012)¹⁶

“The use of ‘they’ in speaking of a single individual is not a modern deviation from classical English. It is found in the works of many great writers including Malory, Shakespeare, Swift, Defoe, Shelley, Austen, Scott, Kingsley, Dickens, Ruskin, [and] George Eliot.”¹⁷ Jane Austen employed the singular *they* seventy-five times, including this usage in *Pride and Prejudice*: “I always delight in . . . cheating a person of their premeditated contempt.”¹⁸

Thus, while it is a foundational rule of pronominal usage that a pronoun must agree in number with the noun it references, writers and speakers who use *they* as a singular pronoun do not violate the rule because usage established *they* as both a singular and plural pronoun centuries ago.¹⁹

13 BARON, *supra* note 1, at 150 (quoting the *Oxford English Dictionary*).

14 Eagleson, *supra* note 7, at 96.

15 BARON, *supra* note 1, at 169.

16 ANTONIO GIDI & HENRY WEIHOFFEN, *LEGAL WRITING STYLE* 30 (3d ed. 2018) (quoting Barack Obama, President, Statement by the President on the Supreme Court’s Ruling on Arizona v. the United States (June 25, 2012)).

17 BERGEN EVANS & CORNELIA EVANS, *A DICTIONARY OF CONTEMPORARY AMERICAN USAGE* 509 (1957); *see also* DENNIS BARON, *GRAMMAR AND GENDER* 193 (1986) (noting that English writers Addison, Austen, Fielding, Chesterfield, Ruskin, and Scott employed the singular *they*); STERLING A. LEONARD, *THE DOCTRINE OF CORRECTNESS IN ENGLISH USAGE 1700–1800*, 225 (1929) (noting the use of singular *they* by Austen, Scott, Addison, and Swift, and commenting that British authors of the eighteenth and nineteenth century used the singular *they* more freely than American authors of the period).

18 BARON, *supra* note 1, at 155 (citing Lorraine Berry, ‘They’: *The Singular Pronoun that Could Solve Sexism in English*, *THE GUARDIAN* (May 5, 2016), <https://www.theguardian.com/books/booksblog/2016/may/05/they-the-singular-pronoun-that-could-solve-sexism-in-english>; Gretchen McCulloch, *This Year Marks a New Language Shift in how English Speakers Use Pronouns*, *Quartz* (Dec. 21, 2015), <https://www.qz.com/578937/this-year-marks-a-new-language-shift-in-how-english-speakers-use-pronouns>).

19 DALE SPENDER, *MAN MADE LANGUAGE* 149 (2d ed. 1985) (“Before the zealous practices of the nineteenth-century prescriptive grammarians, the common usage was to use *they* for sex-indeterminable references.”). The practice of gender and number agreement in English pronouns predated any attempt to prescribe grammar. Scholars who began to categorize and systematize English grammar recognized that English speakers and writers observed what one grammarian coined as “the fifth rule of syntax,” that a pronoun must agree with its antecedent in gender and number. BARON, *supra* note 17, at 98, 191.

And, the singular *they* has historically been used not only in informal settings, and not only in literature, but also in legal writing. At its inception in the Colonial period, American legal writing took the form of colonial constitutions and statutes, as well as government correspondence and private contracts and corporate documents.²⁰ Just as speakers and writers generally employed the singular *they* when English was first spoken and written, early American legal writers, including lawyers and legislatures, also employed the singular *they*.

In 1647, within the first codification of laws of the nascent Massachusetts colony, the legislature employed the singular *they* forty-three times, as in this edict: “If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death.”²¹ Appendix B lists other examples from the period, including the following instances.

- [B]e it further Enacted by the Authority aforesaid, That every Retailer . . . shall also take and have . . . a Permit . . . for which Entry and Permit they shall pay *One Shilling*, and no more.
—Act of the Pennsylvania Province General Assembly (1719)²²

- [E]very Member shall . . . meet annually, at the Redwood-Library, at Ten of the Clock in the Forenoon, on every last Wednesday of September; where and when . . . they shall choose eight Directors, a Treasurer, a Secretary, and a Librarian.
—Laws of the Redwood-Library Company (1765)²³

Thus, the rule of English grammar that American legal writers first followed approved the singular *they*, and legal readers prior to the nineteenth century recognized the singular *they* as grammatically correct.

While later grammars attempted to institute a rule against singular *they*, and falsely asserted that *they* had always been labeled as incorrect,²⁴ this proscription is a relatively recent invention. Grammarians began proscribing the singular *they* in the late eighteenth century, asserting that it failed to observe the rule that a pronoun must agree in number with

²⁰ See Appendix B (collecting examples).

²¹ THE BOOK OF THE GENERAL LAUUES AND LIBERTYES CONCERNING THE INHABITANTS OF THE MASSACHUSETTS 5 (Cambridge 1648).

²² *An Act Passed in the General Assembly Held at Philadelphia for the Province of the Pennsylvania the Twenty Fifth Day of April, 1719*, in THE STATUTES AT LARGE OF PENNSYLVANIA 229 (Philadelphia 1719).

²³ REDWOOD LIBRARY COMPANY, LAWS OF THE REDWOOD-LIBRARY COMPANY 4 (Newport, Samuel Hall 1765).

²⁴ See BARON, *supra* note 1, at 24 (referencing an eighteenth-century usage critic who incorrectly asserted that *he* was the only singular pronoun when English was first spoken); BARON, *supra* note 17, at 195 (quoting twentieth-century grammarian Edward D. Johnson, misstating that the singular *they* “annoys writers, who must forego the privileges the masculine pronoun has for millennia enjoyed in English and its root languages”).

the noun it references.²⁵ But at that point *they* had already been a singular pronoun for several hundred years.

And, despite the campaign to defeat it that lasted for close to two hundred years, speakers and writers of English continued to use *they* as a singular pronoun.²⁶ In 1974, a series of usage tests established that English speakers overwhelmingly favored the singular *they*, particularly in reference to indefinite nouns. In one of the tests, subjects were asked to fill the blank in the sentence, “Somebody showed her the way, didn’t _____?” 87% of respondents used *they*. Subsequent tests reached similar results.²⁷

A. Two competing schools of thought agree on one principle: common usage establishes and validates English grammar rules

The singular *they* has been established as grammatical through its historical use since before the advent of modern English, and through its continued use today. And even those who insist that prescribed grammar rules should govern English nevertheless acknowledge that such directives must ultimately yield to contrary long-standing usage.

To put this point in context, there have long existed two schools of thought when it comes to how grammar rules should develop. The writer David Foster Wallace identified the two camps as prescriptivism and descriptivism.²⁸ Prescriptivists see grammar as a system of rules that is made and enforced by grammarians and usage experts. Descriptivists perceive grammar rules as arising from the way that English is actually spoken and written.²⁹ In that regard, descriptivists emphasize that the changing nature of English defies any attempt to prescribe it. “[L]anguage changes constantly. . . . Since language changes this much, no one can

²⁵ See BARON, *supra* note 1, at 152; Bodine, *supra* note 2, at 135–36 (tracing the first proscription of the singular *they* to a grammar text published in 1795).

²⁶ SPENDER, *supra* note 19, at 149 (quoting Bodine, *supra* note 22, at 131) (“[U]sing they as a singular is still alive and well, ‘despite almost two centuries of vigorous attempts to analyze and regulate it out of existence.’”); Baron, *supra* note 10 (“[T]he fight against singular *they* was already lost by the time eighteenth-century critics began objecting to it.”).

²⁷ Eagleson, *supra* note 7, at 90.

²⁸ DAVID FOSTER WALLACE, *Authority and American Usage*, in *CONSIDER THE LOBSTER AND OTHER ESSAYS* 66, 79 (2005) (crediting *Webster’s Third International Dictionary* editor Philip Gove as the source of the terms); see also Johnson, *supra* note 1, at 36 (“We think of grammar as being prescriptive—a set of rules we have no choice but to follow. But grammar can also be seen as descriptive—a collective assessment of how we write now.”).

²⁹ A reductive view sees prescriptivism as authoritarian and descriptivism as populist. See WALLACE, *supra* note 28, at 121 (“The hard-line Descriptivists, for all their calm scientism and avowed preference for fact over value, rely mostly on rhetorical pathos, the visceral emotional Appeal. As mentioned, the relevant emotions here are Sixtiesish in origin and leftist in temperament—an antipathy for conventional Authority and elitist put-downs and uptight restrictions and causticries and androcaucasian bias and snobbery and overt smugness of any sort . . . i.e., for the very attitudes embodied in the prim glare of the grammarians and the languid honk of the Buckley-type elites.”).

say how a word ‘ought’ to be used. The best that anyone can do is to say how it *is* being used.”³⁰ Prescriptivists question whether it is possible to determine what actual usage is at any one time. They also note that the question of what actual usage is only raises further questions, such as, whose usage is considered valid? And, which group’s usage determines what is the correct rule?³¹

Both camps concede that there is at least some truth in the other side’s position. Descriptivists acknowledge that English relies on the existence of norms of grammar and would be incomprehensible without them. Descriptivists also acknowledge that norms may distinguish educated speakers from uneducated speakers.³² Thus, descriptivists do not contest the existence of and need for grammar rules but question that any authority can serve as the source for those rules. Instead, descriptivists pose that grammar rules arise from the consensus of English speakers and writers as expressed through their usage. And prescriptivists agree that, whatever rules grammarians may prescribe, those rules are either validated or invalidated by the actual usage of speakers and writers of the language over time.³³

B. The example of you demonstrates the principle that usage validates grammar rules

The development of the pronoun *you* demonstrates this agreed-upon principle that grammar rules are ultimately determined by common usage

³⁰ EVANS & EVANS, *supra* note 17, at v–vi; see also WALLACE, *supra* note 28, at 79, (quoting GOVE’S WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY) (“A dictionary should have no truck with artificial notions of correctness or superiority. It should be descriptive and not prescriptive.”); Levi C.R. Hord, *Bucking the Linguistic Binary: Gender Neutral Language in English, Swedish, French, and German*, 3 WESTERN PAPERS IN LINGUISTICS 4, 8 (2016) (“Rather than being decided by an authority, most languages are used according to shared public consensus, and new terms are not officially instated but are introduced into speech communities organically with the potential to become widespread. The power that the people have over the language becomes important as it links the acceptance of stigmatized language (including gender neutral language) to social rather than institutional change, making social attitudes significant not only as markers of progress but as targets for potential transformation. While many prescriptivists argue against gender neutral language as incorrect or ungrammatical, the consensus on whether or not its use is acceptable will come from the people who either choose to use it or not, and the prescriptivist viewpoint will become moot.”).

³¹ WALLACE, *supra* note 28, at 84.

³² EVANS & EVANS, *supra* note 17, at v (“Respectable English is a much simpler matter. It means the kind of English that is used by the most respected people, the sort of English that will make readers or listeners regard you as an educated person. Doubts about what is respectable English and what is not usually involve questions of grammar. There are some grammatical constructions, such as *that there dog* and *he ain’t come yet*, that are perfectly intelligible but are not standard English. Such expressions are used by people who are not interested in ‘book learning.’ They are not used by educated people and hence are regarded as ‘incorrect’ and serve as a mark of a class. There is nothing wrong about using them, but in a country such as ours where for a generation almost everybody has had at least a high school education or its equivalent few people are willing to use expressions that are not generally approved as ‘correct.’”).

³³ “In the end, the actual usage of educated speakers and writers is the overarching criterion for correctness. But while actual usage can trump the other factors, it isn’t the only consideration.” BRYAN A. GARNER, A DICTIONARY OF MODERN AMERICAN USAGE xi (1998) (detailing “Actual Usage” within a list of “First Principles” to consider in resolving usage questions, following other prescriptivist factors such as “Word-Judging”).

over time. In middle English, *you* originally served exclusively as a plural pronoun—“You shall rise, and sing together, ‘A Mighty Fortress is Our God.’” Speakers referred to another individual person in the second person either with the formal *thee* or the informal *thou*. Over time, speakers and writers of middle English who had previously only used *you* in the plural began to employ *you* and its related pronoun *your* alongside *thee* as a deferential way to refer to another individual of higher standing, and thus English gained the terms “your highness” and “your majesty.” Then, in the seventeenth century, modern English users abandoned both *thee* and *thou* altogether in favor of employing *you* as a singular second-person pronoun in all contexts.³⁴ The linguist Ann Bodine explained this evolution in usage from formal and informal terms to the all-encompassing *you* as reflecting a transition in the English social structure towards greater egalitarianism.³⁵

Grammarians of the day thundered against this new usage. George Fox, the founder of what became the Quakers, wrote a book on the subject. He labeled anyone who would use *you* in reference to an individual as “a Novice, and Unmannerly, and an Ideot, and a Fool.”³⁶ But despite these prescriptivist efforts, the speakers and writers of English continued to use the singular *you*. As a result, prescriptive grammars and dictionaries ultimately acknowledged that *you* had displaced *thee* and *thou*.³⁷

While the transition from *thee* and *thou* to the singular *you* within modern English can be traced to the seventeenth century, the singular *they* has existed in modern English since it emerged from middle English, long before the advent of prescriptive grammar. “Given that singular *they* was common by the late 1300’s, and singular *you* is a much newer form, they should be the model for justifying singular *you*, and not the other way around.”³⁸

In 1896, writing in reference to the singular *they*, the librarian at Macon, Georgia’s Wesleyan College spoke to the idea that rules of English usage are ultimately determined by its users, not any authority.

³⁴ BARON, *supra* note 1, at 152–53, 163; see also WALLACE, *supra* note 28, at 75; Teresa M. Bejan, *What Quakers Can Teach Us About the Politics of Pronouns*, N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/2019/11/16/opinion/sunday/pronouns-quakers.html>; Eagleson, *supra* note 7, at 91–92.

³⁵ Bodine, *supra* note 2, at 142.

³⁶ GEORGE FOX, A BATTLE-DOOR FOR TEACHERS AND PROFESSORS TO LEARN SINGULAR & PLURAL 2 (1660); see also Baron, *supra* note 10 (describing the ascendance of singular *you*, and noting that Fox was joined by prominent eighteenth-century grammarians Robert Lowth and Lindley Murray in prescribing *thou* as singular and *you* as plural).

³⁷ ANNE FISHER, A PRACTICAL NEW GRAMMAR, WITH EXERCISES IN BAD ENGLISH: OR, AN EASY GUIDE TO SPEAKING AND WRITING THE ENGLISH LANGUAGE PROPERLY AND CORRECTLY 70 (3d ed. 1753) (acknowledging that *you* had come to take the place of *thou* and *thee*, while *your* took the place of *thy*, and *yours* took the place of *thine*). *You* is also not an outlier case in terms of serving as both a singular and plural pronoun. Other pronouns, such as *who*, may be either singular or plural depending on the context. EVANS & EVANS, *supra* note 17, at 396.

³⁸ BARON, *supra* note 1, at 153.

[T]he critics may shout themselves hoarse telling us that . . . the masculine pronoun is to be regarded as including both genders; the language sense of the average English-speaking person will never tolerate its intrusion in such a sentence as this: “Either the husband or the wife will change *his* opinion.” Nine people out of ten, nay, ninety-nine out of a hundred, if they haven’t the fear of the schoolmaster before their eyes, will say, in such a case, “Either the husband or the wife will change *their* opinion.” In fact, this usage is now so common in conversation that it may almost be said to have become a well-established colloquialism. . . . The queen’s English must step down from its throne when the sovereign people take it in hand, as must its queen herself, whether she wield the scepter or the ferule, and submit to the law of the multitude. Speech is a born democrat; in its realm the voice of the people is supreme.³⁹

And, in fact, just as prescriptivists yielded to the common usage of the singular *you*, grammarians and dictionary editors have conceded what usage had already established from before a time when there were either grammars or dictionaries: *they* is a singular pronoun.⁴⁰ The leading unabridged dictionaries—the *Oxford English Dictionary*, *Webster’s Third International Dictionary*, and the *Random House Webster’s Dictionary*—each ratify the use of *they* as a third-person singular generic pronoun.⁴¹ An *Oxford English Dictionary* blog post referenced by its definition of *they* begins, “Singular *they* has become the pronoun of choice to replace *he* and *she* in cases where the gender of the antecedent—the word the pronoun refers to—is unknown, irrelevant, or nonbinary, or where gender needs to be concealed.”⁴² Even those grammarians who do not accept singular *they* as grammatically correct nevertheless acknowledge that *they* is and has been commonly used as a singular generic pronoun.⁴³

³⁹ Eliza Frances Andrews, *Some Grammatical Stumbling Blocks*, THE CHAUTAUQUAN: A WEEKLY NEWSMAGAZINE, June 1896, at 340.

⁴⁰ BARON, *supra* note 1, at 179 (“[T]he NEW OXFORD AMERICAN DICTIONARY calls singular *they* ‘generally accepted’ with indefinite [nouns], and ‘now common but less widely accepted’ with definite nouns, especially in formal contexts.”); AMERICAN HERITAGE BOOK OF ENGLISH USAGE 178 (1996) (describing the singular *they* as “[t]he alternative to the masculine generic with the longest and most distinguished history”); MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1298 (11th ed. 2003) (accepting singular *they* as “well-established in speech and writing, even in literary and formal contexts”); THE CAMBRIDGE GUIDE TO ENGLISH USAGE 538 (Pam Peters ed., 2004) (referring to the use of singular *they* with indefinite nouns as “unremarkable – an element of common usage,” and stating that “[w]riters who use singular *they*/them/their are not at fault”).

⁴¹ Eagleson, *supra* note 7, at 87–88 (detailing *they* entries within the *Oxford English Dictionary*, *Webster’s Third International Dictionary*, and the *Random House Webster’s Dictionary* that ratify its use as a third-person singular generic pronoun).

⁴² Baron, *supra* note 10.

⁴³ Brad Charles & Thomas Myers, *Evolving They*, MICH. B.J., June 1998, at 38, 39 (noting that Bryan Garner’s *Modern English Usage* and *The Chicago Manual of Style* accept singular *they* usage to achieve gender neutrality while cautioning against using it in formal writing because it is “stigmatized”); Salembier, *supra* note 5, at 176 (“The practice of using the singular *they* is usually defended on the ground that *they* is commonly used as a singular pronoun in spoken English. Also cited in support of its use in legislation is the fact that dictionaries sometimes refer to *they* as a singular pronoun, which is not surprising because dictionaries reflect patterns of usage (as distinct from notions of grammatical correctness).”)

II. The campaign to ban the singular *they* arose from a sexist impulse to decree the pseudo-generic masculine *he*

While the singular *they* has been commonly and continuously used since the advent of modern English, and while English grammar books and dictionaries now accept the singular *they*, legal writing style guides and textbooks continue to prohibit its use in reference to singular generic nouns.⁴⁴ “Ungrammatical—A defendant may claim that their constitutional rights were violated.”⁴⁵ “Common-Error alert: It is incorrect to use *they* or *their* to refer to a singular antecedent.”⁴⁶ Why?

“Legal writing is formal writing.” As a legal writing teacher, I state that as a truism to my students. Embedded within that statement is the understanding that, as a type of formal writing, legal writing must follow usage rules strictly. As a corollary, legal readers consider a writer’s failure to follow usage rules strictly as evidence of illiteracy.⁴⁷

When I and other legal writing teachers forbid the use of the singular *they*, we are following the lead of the legal writing style guides that ban the singular *they* because some grammarians have said that the singular *they* is ungrammatical, full stop. That is to say, legal writing follows grammar rules, and this has been a grammar rule, so legal writing follows it.⁴⁸

44 See DEBORAH E. BOUCHOUX, *ASPEN HANDBOOK FOR LEGAL WRITERS: A PRACTICAL REFERENCE* 18–21 (4th ed. 2017) (requiring the use of singular pronouns to refer to indefinite or generic nouns and specifically rejecting the singular *they*); LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 180 (7th ed. 2018) (describing the use of *they* or *their* to refer to a singular generic noun as an “error”); GIDI & WEIHOFEN, *supra* note 16, at 30–31 (asserting that the singular *they* “has been considered ungrammatical since the eighteenth century” and thus that “lawyers cannot use it in formal prose”); TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER’S GUIDE TO WRITING WELL* 150–51 (6th ed. 2016) (describing the use of the singular *they* in relation to generic singular nouns as a “mismatch” and suggesting several alternatives); TERRI LECLERCQ & KARIN MIKA, *GUIDE TO LEGAL WRITING STYLE* 2–3 (5th ed. 2011) (labeling the use of “*they*” to refer to “*each*” as incorrectly mixing plural with singular); RICHARD C. WYDICK & AMY E. SLOAN, *PLAIN ENGLISH FOR LAWYERS* 60–61, 68 (6th ed. 2019) (noting that the singular *they* is commonly used colloquially, and encouraging its use as a personal pronoun, but describing it as a “distractor” and “off-putting” in the course of prohibiting its use with singular generic nouns); Brown, *supra* note 5, at 73–75 (collecting examples of singular *they* proscriptions in legal writing usage guides and scholarship); Cobb, *supra* note 2, at 12 (“Most U.S. style guides advise writers to avoid [the singular *they*] whenever possible, if only to escape the wrath of grammatical quibblers; to them it may suggest the writer is uneducated”).

45 ENQUIST, OATES & FRANCIS, *supra* note 5, at 631.

46 DEBORAH CUPPLES & MARGARET TEMPLE-SMITH, *GRAMMAR, PUNCTUATION & STYLE: A QUICK GUIDE FOR LAWYERS AND OTHER WRITERS* 32 (2013).

47 Conversely, the adherence to usage rules, whatever their actual utility may be, may not only communicate one’s education, but may also be a point of pride and personal identity. David Foster Wallace provides an entertaining survey of the personality type sometimes described as “grammar nerd,” and which his family called the “SNOOT.” WALLACE, *supra* note 28, at 69 n.5. The research for this article turned up numerous instances where the authors of legal writing usage guides and articles identified themselves as members of the SNOOT community. See Cobb, *supra* note 2, at 15 (“A proud grammar and rhetoric nerd”); Suzanne E. Rowe, *Finessing Gender Pronouns*, OR. ST. B. BULL., June 2007 (referring to the author as a “Grammar curmudgeon”).

48 Beverly Ray Burlingame, Note, *Reaction and Distraction: The Pronoun Problem in Legal Persuasion*, 1 SCRIBES J. LEGAL WRITING 87, 104 (1990) (cautioning against using the singular *they* because the “grammarian” subset of legal readers will view the construction as not grammatical and thus make the writer appear “illiterate”).

To be sure, some legal writing teachers have recently rejected this approach, and permit the use of the singular *they* to refer to singular generic nouns. And, in this author's survey of legal writing textbooks and style guides, one textbook gave qualified acceptance to the singular *they*. "The singular they can also be used as a generic, gender-neutral pronoun. Nevertheless, we recognize that in some legal environments, using the singular they will be perceived as incorrect."⁴⁹

But legal writing usage authorities otherwise continue to reject the singular *they*.⁵⁰ As the authors of one legal writing style manual put it, "Despite its centuries-old prestigious pedigree going back to Middle English, the singular *they* has been considered ungrammatical since the eighteenth century, and opposition is still strong. As a result, lawyers cannot use it in formal prose, at least not until it becomes accepted as Standard English."⁵¹

So, then, why did the singular *they*, which had previously been considered grammatically correct in Standard English by legal writers and everyday speakers alike suddenly become ungrammatical beginning in the eighteenth century? And does the basis for that proscription continue to hold weight today, and thus justify legal writing's continued proscription of the singular *they*?

Charting the basis for the proscription against singular *they* reveals three steps: an androcentric campaign led by grammarians to champion the generic masculine as the only acceptable generic third-person pronoun; an accompanying effort to paint the singular *they* as ungrammatical because it stood in the way of instituting male dominance; and a modern reform movement which rejected the generic masculine as androcentric. As this investigation shows, legal writing stubbornly clings to an invented proscription that was justified at its inception by unapologetic sexism.

A. Grammarians championed the pseudo-generic pronoun *he* as an assertion of male dominance

English grammar as a system of prescriptions did not emerge until the seventeenth century. English grammar first took the form of Latin grammar. That is, grammarians transferred some of the rules that applied

⁴⁹ RICHARD K. NEUMANN JR., ELLIE MARGOLIS & KATHRYN M. STANCHI, *LEGAL REASONING AND LEGAL WRITING* 218–19 (9th ed. 2021) (suggesting several non-pronoun alternatives to the "disfavored" *he* for use with generic nouns, including pluralizing or removing the noun, before proposing as a last resort to either use the singular *they* or alternate male and female pronouns).

⁵⁰ See *supra* notes 44–46.

⁵¹ GIDI & WEIHOFEN, *supra* note 16, at 30–31.

to Latin in formulating the emerging rules of English grammar and usage.⁵² At their inception in the sixteenth century, these English grammar books did not bar the common and formal usage of singular *they*.⁵³ And writers, including legal writers, continued using the singular *they* as a singular generic pronoun as they had since the advent of modern English, and even earlier.

However, beginning in the mid-eighteenth century, grammars began arguing that proper usage required the use of the generic masculine—*he*, *him*, *his*. They baldly asserted that the generic masculine was the only proper third-person singular generic pronoun despite the widespread use of the singular *they*.⁵⁴

As the linguist Ann Bodine documented, this effort to advance the generic masculine pronoun served as part of a larger effort to institute the use of masculine terms in gender-neutral settings. At the same time as grammarians were championing *he*, they also contended that “man” and “mankind” must be used to represent all people, as in “Manners maketh man.” Bodine postulated that the almost all-male body of grammarians who championed the generic masculine was driven by an androcentric, or sexist and male-centered, intent.⁵⁵

Some were more explicit about it than others. “[T]he supreme Being . . . is in all languages Masculine, in as much as the masculine Sex is the superior and more excellent.”⁵⁶ Or, as one early grammarian declared and

52 “Throughout the seventeenth and early eighteenth centuries English grammarians were sufficiently influenced by Latin grammar that the discussion of English syntax scarcely went beyond the Latin-derived Three Concords (subject and verb, substantive and adjective, relative pronoun and antecedent).” Bodine, *supra* note 2, at 134; see BARON, *supra* note 1, at 23–24 (noting the absence of formalized English grammar prior to the seventeenth century, and the substitution of Latin grammar in its place, followed by a period in the seventeenth and eighteenth century where the first English grammars appeared, modeled on Latin grammar texts).

53 Bodine, *supra* note 2, at 134–35 (surveying grammar texts and uncovering no proscription of singular *they* prior to 1795).

54 See FISHER, *supra* note 37, at 118; see also Bodine, *supra* note 2, at 135–36 (locating the genesis of the generic masculine rule in the mid-eighteenth century, but also noting that a consensus did not form among grammarians until the nineteenth century).

55 Bodine, *supra* note 2, at 133; see Julia P. Stanley, *Sexist Grammar*, 39 COLLEGE ENGLISH 800, 800 (1978) (“The history of language, at least what we know of it, is an example of the longevity of male social control and the effects of that control.”); see also URSULA K. LE GUIN, *STEERING THE CRAFT* 17 (2015) (“My use of *their* is socially motivated and, if you like, politically correct: a deliberate response to the socially and politically significant banning of our genderless pronoun by language legislators enforcing the notion that the male sex is the only one that counts. I consistently break a rule I consider to be not only fake but pernicious. I know what I’m doing and why.”).

56 BARON, *supra* note 17, at 3 (quoting JAMES HARRIS, *HERMES, OR, A PHILOSOPHICAL INQUIRY CONCERNING UNIVERSAL GRAMMAR* 50 (2d ed. 1765)).

57 “The Masculine Gender is more worthy than the Feminine, and the Feminine is more worthy than the Neuter.” Stanley, *supra* note 55, at 803 (quoting JOSHUA POOLE, *THE ENGLISH ACCIDENCE* 21 (1646)). “[I]n all languages, the masculine gender is considered the most worthy, and is generally employed when both sexes are included under one common term.” *Id.* at 804 (quoting GOULD BROWN, *GRAMMAR OF ENGLISH GRAMMARS* (1851)). “[T]he worthier is preferred and set before. As a man is sette before a woman.” Bodine, *supra* note 2, at 134 (quoting T. WILSON, *ARTE OF RHETORIQUE* 234 (1560)); see also SPENDER, *supra* note 19, at 148 (citing JOHN KIRKBY, *A NEW ENGLISH GRAMMAR* (1746) for the grammatical rule that the male gender is more comprehensive than the female gender).

others parroted, the masculine gender is “more worthy.”⁵⁷ Lindley Murray, a prominent grammarian of the late eighteenth century who published the first rule proscribing the singular *they* in 1795, promoted the generic masculine in its stead and employed as an example of incorrect usage a sentence that also voiced a justification for instituting male dominance within grammar rules. “Each of the sexes should keep within *its* particular bounds, and content *themselves* with the advantages of *their* particular districts.”⁵⁸

James Beattie opposed attempts to overthrow the generic masculine on the ground that it would upset the natural order of the sexes. In that regard, he elevated the question from that of grammar and usage to that of religious dogma. Thus, in his view, failing to use the pseudo generic *he* rendered one not just incorrect but pagan.⁵⁹

Another usage expert recognized the objection that the usage was sexist before demeaning it: “we shall probably persist in refusing women their due here as stubbornly as Englishmen continue to offend the Scots by saving England instead of Britain.”⁶⁰

The “worthiness of the genders” position can be more benignly interpreted. The first grammars of English were more precisely grammars of Latin. That is to say, seventeenth-century grammarians were so enamored of the Latin language that gave birth to English that the newer tongue was first analyzed according to the rules of Latin grammar.⁶¹ And, while Latin and English share a number of commonalities, one fundamental difference between the languages concerns gender. Latin employs a grammatical gender system that assigns gender to any number of words whether the words refer to biological sex or not. On the other hand, English is a natural gender language that generally only assigns gender to words based on the natural gender of the word.⁶² For example, *boy* refers to a male and *girl* refers to a female, and thus require pronouns that match their gender. But objects like *house* or *leaf* possess no gender assignment and do not require gendered pronouns. By contrast, Latin assigns gender to words whether or not gender is naturally associated with them. For example, in Latin, the names of rivers are male, while types of trees are female.⁶³ Thus, one can

⁵⁸ LINDLEY MURRAY, *ENGLISH GRAMMAR, ADAPTED TO THE DIFFERENT CLASSES OF LEARNERS* 148 (1805); Bodine, *supra* note 2, at 135–36 (dating Murray’s initial proscription against singular *they* to 1795).

⁵⁹ BARON, *supra* note 17, at 99 (noting that Beattie was specifically incensed by references to God as female).

⁶⁰ HENRY FROUDE, *THE KING’S ENGLISH* 67 (2d ed. 1908).

⁶¹ BARON, *supra* note 1, at 23–24.

⁶² Fischer, *supra* note 2, at 476 (“Many of the world’s

languages employ grammatical gender systems. . . . While grammatical gender may have some connection to sex, the two categories are not coextensive, and in some languages gender labels have little connection to sex. In other languages, called ‘semantic’ or ‘natural gender systems,’ grammatical gender is determined by the sex of the word’s referent. . . . [T]he English language . . . is a natural gender system.”)

⁶³ CHARLES E. BENNETT, *NEW LATIN GRAMMAR*, pt. II, ch. I, § 15 (2005) (e-book); see BARON, *supra* note 1, at 24; EVANS & EVANS, *supra* note 17, at 195–96.

explain the genesis of the gender masculine rule in English not as a sexist effort to promote male supremacy but rather as an ill-fated attempt to transplant a mismatched grammatical rule from Latin to English.⁶⁴

Whether one concludes that grammarians championed the generic masculine to realize an androcentric intent or to impose Latin grammar rules on English speakers, one thing is certain: the grammarians did not impose the generic masculine because it was grammatically correct. For it was not. The first rule of pronominal usage holds that a pronoun must agree in number and gender with the noun it references. The masculine *he* does not agree in gender with a generic noun that encompasses all genders and no gender.⁶⁵ Even in a historical period that did not recognize the non-binary, the masculine *he* disagreed with any generic noun such as “farmer” or “someone” that encompassed both the masculine and feminine genders.

Indeed, some sentences are rendered nonsensical when *he* is used to refer to a generic noun, as in, “Everyone liked the dinner, but he did not care for the dessert,”⁶⁶ or “Either the boy or the girl left his book.”⁶⁷ Other sentences may confuse the reader or appear absurd in context, as in this passage from a letter to *The New York Times Magazine*: “The average American needs the small routines of getting ready for work. As he shaves or blow-dries his hair or pulls on his panty hose, he is easing himself by small stages into the demands of the day.”⁶⁸ Nevertheless, prescriptivists of the period advocated the ungrammatical generic masculine as the only grammatically correct generic pronoun.

To surmount the obstacle posed by the rule of gender agreement, prescriptive grammarians pronounced that, for purposes of generic nouns and pronouns, the masculine includes the feminine.⁶⁹ And, seeking validation for this position, they looked for it not in usage but in legislation. The English language lacks a governing prescriptive body that other languages possess, such as the French Academy. Nevertheless, linguists assign significance to the English Parliament’s passage of the

64 See Bodine, *supra* note 2, at 134–35.

65 BARON, *supra* note 1, at 193.

66 BARON, *supra* note 17, at 195 (quoting EVANS & EVANS, *supra* note 17, at 164). A literate English reader will likely conclude that the sentence intends to single out one person rather than the “everyone” to which the “he” pronoun is meant to refer. Other sentences illustrate the same problem: “When I came up, everybody was laughing at me, but I was glad to see him just the same.” Bodine, *supra* note 2, at 140; LEONARD, *supra* note 17, at 224 n.57.

67 EVANS & EVANS, *supra* note 17, at 196.

68 Cobb, *supra* note 2, at 14; see also LE GUIN, *supra* note 55, at 17 (noting the absurdity of the generic masculine in the sentence, “If a person needs an abortion, he should be required to tell his parents.”).

69 “The Masculine Person answers to the general Name, which comprehends both Male and Female.” FISHER, *supra* note 33, at 118; see also Bodine, *supra* note 2, at 135 (uncovering the first instance of the generic masculine rule in 1746).

Interpretation Act of 1850.⁷⁰ The act for the first time decreed the canon of legislative construction that references to the masculine includes the feminine, but not vice versa. The United States adopted this canon through the enactment of the Dictionary Act in 1871, and it remains in effect today through subsequent legislation.⁷¹

B. Grammarians falsely asserted that the singular they was ungrammatical in order to preserve the hegemony of the generic masculine

All this time, and despite the stamp of authority supplied to grammarians by the then all-male Parliament and all-male United States Congress,⁷² writers and speakers of English continued to employ the singular *they*. As one dictionary later explained it, “neither this act, nor all the grammar books in the world can alter the fact that, if we are told *somebody telephoned while you were out*, we say *did they leave a message?*”⁷³ Nevertheless, the passage of the Interpretation Act marked the beginning of a period from the nineteenth to the twentieth century when grammarians pronounced the generic masculine to be the only grammatically correct third-person singular generic pronoun.

Beginning at that time, as part of the effort to ingrain this new exclusionary rule, grammarians also inveighed against the use of singular *they*.⁷⁴ While the proscription against singular *they* was unknown before the late eighteenth century, by the nineteenth century one editor described the singular *they* as a “grammatical monstrosity.”⁷⁵ Another writer dubbed it “too vulgar to be uttered.”⁷⁶

To support the hegemony of the generic masculine and the accompanying proscription against *they*, grammarians invented the fiction that only the illiterate employed the singular *they*. H.W. Fowler, the preeminent

⁷⁰ See EVANS & EVANS, *supra* note 17, at 221; Bodine, *supra* note 2, at 136; Ross Carter, *Interpretation Acts—Are They, and (How) Do They Make for, Great Law?*, THE LOOPHOLE, Nov. 2020, at 2, 16–20. This act of Parliament is also referred to variously as the “Parliament Act,” the “Abbreviation Act,” or “Lord Brougham’s Act,” after the noble who championed its passage in the House of Lords. BARON, *supra* note 17, at 139–40; Carter, *supra* note 70, at 5, 16.

⁷¹ 1 U.S.C. § 1 (“In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . words importing the masculine gender include the feminine as well.”); see BARON, *supra* note 1, at 76–77.

⁷² SPENDER, *supra* note 19, at 150 (noting that there were no female members of Parliament in 1850).

⁷³ EVANS & EVANS, *supra* note 17, at 221.

⁷⁴ BARON, *supra* note 1, at 152; Bodine, *supra* note 2, at 135–36 (tracing the first proscription of the singular *they* to a grammar text published in 1795).

⁷⁵ BARON, *supra* note 1, at 160 (citing Frederic H. Balfour, *Wanted—Another Word*, THE GLOBE (LONDON), Apr. 12, 1890, at 3).

⁷⁶ BARON, *supra* note 1, at 157 (quoting *New Words*, NEW YORK MERCURY AND WEEKLY JOURNAL OF COMMERCE, Jan. 31, 1839, at 4).

usage expert of the late nineteenth and early twentieth century,⁷⁷ famously sneered that the singular *they* “sets the literary man’s teeth on edge.”⁷⁸ He lamented that the *Oxford English Dictionary* acknowledged the singular *they* while offering only the mild warning that it was “[n]ot favoured by grammarians.”⁷⁹ In response, Fowler predicted that he and his fellow grammarians would “have their way on the point,” and offered in support that “few good modern writers would flout the grammarians so conspicuously.”⁸⁰ But in the same period when Fowler penned those words, writers and speakers of all stripes, including some of the greatest literary lights, continued to employ the singular *they*.

- I know when I like a person directly I see them.
—*The Voyage Out*, by Virginia Woolf (1915)⁸¹
- I cut no one, except when I’m afraid of being bored by them.
—*Told by an Idiot*, by Rose Macaulay (1923)⁸²
- Nobody would ever marry if they thought it over.
—*Village Wooing*, by George Bernard Shaw (1934)⁸³

Fowler himself allowed that singular *they* was the “popular solution” as a generic pronoun.⁸⁴

Nevertheless, while grammarians could not oust *they* from common usage by employing the false proclamation that only the uncouth used it, they did unseat it within the classroom. From the mid-nineteenth century to the late twentieth century, several generations of schoolchildren were taught the generic masculine as the one correct rule of third-person singular generic pronoun usage.⁸⁵ During that period, Fowler could have crowed that the grammarians did indeed “have their way,” at least insofar as they taught a nation of English speakers “to achieve both elegance of

⁷⁷ David Foster Wallace refers to Fowler’s *A Dictionary of Modern English Usage* as “the granddaddy of modern usage guides.” WALLACE, *supra* note 28, at 73 n.10. During the Battle of Britain, Winston Churchill presented a copy of the dictionary to the Queen of England as a Christmas gift. ERIK LARSON, *THE SPLENDID AND THE VILE* 326 (2020).

⁷⁸ FOWLER, *supra* note 3, at 392.

⁷⁹ *Id.* at 648 (quoting the *Oxford English Dictionary*).

⁸⁰ *Id.*

⁸¹ Eagleson, *supra* note 7, at 97.

⁸² GEORGE H. MCKNIGHT, *MODERN ENGLISH IN THE MAKING* 529 (1928) (emphasis omitted).

⁸³ Eagleson, *supra* note 7, at 97.

⁸⁴ FOWLER, *supra* note 3, at 392.

⁸⁵ See, e.g., Bodine, *supra* note 2, at 138–39 (surveying thirty-three school grammars in use in American junior and senior high schools in the 1970s and finding that twenty-eight of them prescribed the generic masculine while proscribing both the singular *they* and the paired pronoun *he or she*); *id.* at 137 (quoting RICHARD GRANT WHITE, *EVERYDAY ENGLISH* (1880) (“[H]is is the representative pronoun, as mankind includes both men and women.”)); Cobb, *supra* note 2, at 15 (“And it was 18th century grammarians who installed ‘he’ as the default genderless pronoun by influencing grammar school texts.”). *But see* BARON, *supra* note 17, at 193 (noting that several nineteenth and twentieth century grammarians endorsed the singular *they* in various contexts).

expression and accuracy by referring to women as ‘he.’”⁸⁶ By the mid-twentieth century, it was unremarkable when Strunk and White stated unequivocally that the generic *he* “has lost all suggestion of maleness . . . ; it is never incorrect.”⁸⁷

C. The rejection of he

It took a new generation of linguists, writing during the 1960s and 1970s in the wake of second-wave feminism, to first postulate and then demonstrate that people actually do picture a man when they hear the word *he*.⁸⁸ While grammarians and legislators insisted that the masculine could encompass the feminine and produce a gender-neutral usage, linguistic studies demonstrated that, in practice, the use of the generic masculine *he* causes readers and listeners to visualize only males, not a generic individual of any gender.⁸⁹

In one such study completed in 1984, linguists read the test subjects a cue sentence and then asked the subjects to tell a story featuring the person described in the sentence. In the stories that the subjects told, the gender of the main character was largely determined by the gender of the pronoun used in the cue sentence, indicating that the subjects envisioned only male characters when the generic masculine was used.⁹⁰ In

⁸⁶ Bodine, *supra* note 2, at 131 (“[I]nvariably the feminists’ demand is viewed as an attempt to alter the English language. In fact, the converse is true. Intentionally or not, the movement against sex-indefinite ‘he’ is actually a counter-reaction to an attempt by prescriptive grammarians to alter the language. English has always had other linguistic devices for referring to sex-indefinite referents, notably, the use of singular ‘they.’”).

⁸⁷ WILLIAM STRUNK JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 60 (3d ed. 1979).

⁸⁸ Bodine, *supra* note 2, at 129 (“There has always been a tension between the descriptive and prescriptive functions of grammar. Currently, descriptive grammar is dominant among theorists, but prescriptive grammar is taught in the schools and exercises a range of social effects.”); *see also* Fischer, *supra* note 2, at 480 (“[A] concerted movement for widespread change arose only in the late 1960s, as the second wave of the women’s movement gathered momentum. Feminists in the United States began to promote gender-neutral language as ‘trailblazers in both exposing sexist bias and proposing changes.’”).

⁸⁹ “Many studies [demonstrate] that he does not function generically but instead produces images and ideas of males.” Burlingame, *supra* note 48, at 90; *see also* SPENDER, *supra* note 19, at 152 (citing several effects studies reaching the conclusion that the use of masculine generic pronouns leads readers and listeners to think only of men); Fischer, *supra* note 2, at 483 (citing a study by John Gastil finding that generic masculine pronouns evoked a disproportionate number of male images); Janice Moulton et al., *Sex Bias in Language Use: ‘Neutral’ Pronouns That Aren’t*, 33 AM. PSYCH. 1032, 1034–36 (1978); Schweikart, *supra* note 12, at 3–4 (collecting studies examining the gender effect of the use of the generic masculine).

⁹⁰ Janet Shibley Hyde, *Children’s Understanding of Sexist Language*, 20 DEVELOPMENTAL PSYCH., 697, 699–701 (1984). The article discusses research suggesting that sex typing in children consists of learning a set of sex-role schemas. The first step in categorizing gender involves learning labels, e.g., boy, girl, man, woman, mommy, daddy. The critical period for acquiring gender identity coincides with the period of rapid language acquisition, from eighteen to twenty-four months. In order to test the thesis that the use of gender masculine pronouns could encode male dominant sex-role schemas in young children, the author undertook a study that surveyed first graders, third graders, fifth graders, and college students, tasking subjects with creating stories in response to a cue sentence containing, alternatively, “he,” “he or she,” or “they.” Across all age groups, the resulting stories featured females in the following proportions: “he”: 12%, “they”: 18%, “he or she”: 42%. *Id.* at 700. The same subjects also supplied pronouns in a fill-in task. Twenty-eight percent of first-graders and 84% of college students knew the generic masculine rule. Whether or not they knew the rule, the majority of subjects supplied “he” in gender-neutral fill-in sentences. *Id.* at 701. In a second experiment with third and fifth graders, the story test was again employed, but this time adding “she” as a fourth pronoun condition. Under that condition, 77% told stories about females. *Id.* at 702.

a follow-up study, the same linguists invented a fictitious gender-neutral occupation, “wudgemaker,” and described a worker in this occupation to the test subjects using repeated references either to “he,” “they,” “he or she,” or “she.” Subject ratings of how well women could do the job were significantly affected by the pronoun used to reference it: lowest for “he,” intermediate for “they” and “he or she,” and highest for “she.”⁹¹

The author concluded that the “wudgemaker” data demonstrated that the use of “he” as a generic pronoun, as compared with other pronouns, affects the formation of gender schemas.⁹² As the author of the study put it, “although ‘his’ may be gender-neutral in a grammatical sense, it is not gender-neutral in a psychological sense.”⁹³ For this reason, some scholars took to referring to *he* as a “pseudo-generic” pronoun.⁹⁴

The grammarians who had propounded the generic masculine rule may have viewed the effect that it produced only images of males as a feature, not a bug. But regardless of their intent, the effect of the generic masculine rule was to make females and other genders invisible, and to safeguard the privileges of males.⁹⁵

As a result of the efforts of feminists and linguists to oppose the generic masculine, modern grammars and usage guides turned away from the use of *he* as a generic pronoun, which is now commonly viewed as sexist.⁹⁶

91 *Id.* at 704.

92 *Id.*

93 *Id.* at 698. The same author discussed an earlier study in which college students were asked to write a short essay given the following study question prompt: “In a large coeducational institution the average student will feel isolated in ____ introductory courses.” In general, the study found that males tended to write about males and females about females, but overall, stories were about females in the following proportions depending on the pronoun used to fill the blank: “his”: 35%, “their”: 46%, “his or her”: 56%. *Id.* at 697.

94 Fischer, *supra* note 2, at 476–77; Schweikart, *supra* note 12, at 6 (“Gender neutral pronouns preceded pseudogeneric ‘he’ and are still common in the English language.”).

95 SPENDER, *supra* note 19, at 156–57 (stating that through the use of the generic masculine, women are “eliminated from language, and consequently from thought and reality”); Fischer, *supra* note 2, at 477 (“[U]se of the masculine pronoun is inaccurate for the legal field, which is now composed of about one-third women, and it illustrates how pseudo-generic terms treat the masculine as the norm by omitting express reference to the feminine.”).

96 Cobb, *supra* note 2, at 14 (“Writers who continue to use ‘he’ in this way risk being seen as sexist, out of touch, or intentionally flouting usage norms to make a political point.”); Fischer, *supra* note 2, at 481 (“Studies reported a decline in the use of masculine nouns and pronouns as generics, with one study finding a notable decline in their use in American newspapers and magazines between 1971 and 1979.”); see Bodine, *supra* note 2, at 129 (“[T]hird person pronoun usage will be affected by the current feminist opposition to sex-indefinite ‘he’ – particularly since the well-established alternative, singular ‘they,’ has remained widespread in spoken English throughout the two and a half centuries of its ‘official’ proscription.”). Feminists encouraged other changes in language that were subsequently validated by common usage, such as the adoption of “Ms.” Johnson, *supra* note 1, at 37 (“We experienced something of a cultural revolution in the 1970s and 1980s with the gradual acceptance of Ms. instead of Miss or Mrs. I say gradual because there was opposition. Although Ms. first appeared in 1901, the *New York Times* did not adopt it until 1986.”); Jennifer Finney Boylan, *That’s What Ze Said*, N.Y. TIMES, Jan. 9, 2018, <https://nytimes.com/2018/01/09/opinion/ze-xem-gender-pronouns.html>. Predictably, the transition away from the generic masculine faced resistance. One lawmaker expressed outrage at a 1987 proposal to depart from the generic masculine as part of a broader proposal to make legislative rules more gender neutral. Speaking to the lawmaker who submitted the proposal, Representative John Monks said, “Men ought to be proud they’re men and stand up for them. I’m going to stand up as an individual, Carolyn, and say I don’t want you to make no pantywaist out of me.” Burlingame, *supra* note 48, at 98

And legal writing followed the lead of these modern prescriptions against the generic masculine: legal writing usage manuals now teach writers to avoid using *he* as a generic pronoun.⁹⁷ And, subsequent usage studies showed that legal writers have transitioned away from the use of generic *he*. One such study examined appellate court decisions and found a dramatic increase in the use of gender-neutral language, including the substitution of the paired pronoun *he or she* for the generic masculine, during the period from 1965 to 2006.⁹⁸

Yet, while legal writing acknowledges that the androcentric effort to advance the generic masculine pronoun has been discredited, it nevertheless continues to consume the fruit of that poisonous tree in the form of the androcentric proscription against the singular *they*.⁹⁹ Indeed, legal writing usage constitutes one of the last bastions of singular *they* prescriptivism.

III. The singular they is the grammatical, simple, and inclusive solution to legal writing's pronoun problem

This tendency towards prescriptivism may be natural in a field that is itself founded on creating and observing rules and prescriptions. “Lawyers and judges are notoriously late adopters, especially when it comes to linguistic change. Really, it’s not our fault. We’re trained to follow precedent, to do things the way they’ve always been done.”¹⁰⁰

But it is not just that legal writing follows rules to follow rules. More fundamentally, legal writing follows grammar rules in order to maintain credibility with its audience. That is to say, even though *they* is singular, as

(quoting *Gender Neutral Rules Threaten Lawmaker's Manhood*, UNITED PRESS INT'L NEWSWIRE, Feb. 3, 1987). Supreme Court Justice Antonin Scalia offered perhaps the best defense of the generic masculine, arguing that gender-neutral language generally requires a sacrifice to the “second-best circumlocution.” ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 119 (2008).

⁹⁷ See, e.g., BRYAN A. GARNER, *THE REDBOOK* 204 (4th ed. 2018) (“It is no longer customary to use a masculine form as a gender-neutral inclusive.”); GIDI & WEIHOFEN, *supra* note 16, at 23 (“Contemporary legal writing style . . . avoids male-centric language. . . . [A]ny reader would now cringe to read a text that consistently uses words like *man* or *he* to refer generally to men and women.”); HELENE S. SHAPO, MARILYN R. WALTER & ELIZABETH FAJANS, *WRITING AND ANALYSIS IN THE LAW* 241 (6th ed. 2013); see also Burlingame, *supra* note 48, at 87 (“Legal-writing experts have suggested various alternatives to the generic masculine, now widely considered inherently sexist.”); Johnson, *supra* note 1, at 37 (tracing the gradual movement of legal writing style guides from permitting to omitting sexist language); Kathleen Dillon Narko, *They and Ze, The Power of Pronouns*, 31 CBA REC. 48, 51 (2017) (“In the 1970s and ’80s, the collective ‘he’ became unacceptable as a pronoun representing both men and women. . . . Today, when 50% of law school classes are women, the collective ‘he’ is not inclusive. To avoid sexism, ‘he’ became ‘he or she.’”).

⁹⁸ Fischer, *supra* note 2, at 502–04.

⁹⁹ *Supra* note 5.

¹⁰⁰ Susie Salmon, *The Legal Word: Them!*, ARIZ. ATT’Y, Oct. 2018, at 10.

validated through usage—both historical and current—some legal readers perceive that the singular *they* is grammatically incorrect. And, as with other usage questions, legal writing style guides counsel conservatism in order to preserve credibility with those readers. The legal writer who painstakingly observes grammar rules seeks to establish a bond with the reader through a shared identity as educated rule followers. The writer thus seeks to persuade through an “ethos” appeal based on the writer’s credibility with the reader to complement the logic of the writer’s argument.¹⁰¹

Conversely, appearing to be illiterate destroys one’s credibility not only as a writer but also as an advocate. The tendency towards prescriptivism in legal writing therefore constitutes a conservative impulse to avoid any stylistic choice that could be perceived as an error and thus distract the reader from the argument or thesis.¹⁰² For the legal reader who views the singular *they* as ungrammatical, whether or not that view is correct, reading *they* when used as a singular generic pronoun will cause the reader to trip over the usage, if only momentarily, and thus distract the reader.¹⁰³

The schism that exists between common usage and legal writing usage with respect to this concern for maintaining credibility with the audience may be personified by Bryan Garner, who serves as an authority in both worlds. Garner has written a dictionary of common usage, and has also edited *Black’s Law Dictionary*. He writes a well-respected common usage guide, as well as *The Redbook* of legal usage. He describes the use of the singular *they* as “becoming commonplace” and “what promises to be the ultimate solution to the problem” of the sexist generic masculine pronoun.¹⁰⁴ Nevertheless, in formal writing generally, and legal writing particularly, he forbids it. “Many people substitute the plural *they* and *their*

101 See WALLACE, *supra* note 28, at 97–98; Cobb, *supra* note 2, at 15 (noting that clients count on their lawyers to maintain credibility with their audience in order to persuade).

102 Burlingame, *supra* note 48, at 109 (“Language abounds with latent traps that can dramatically crush the persuasiveness of a legal writer. . . . Avoiding these snares requires skill in writing and sensitivity to the views of readers. . . . If the writer succeeds, readers are largely unaware that the dangers even exist. Instead, their central focus remains on the lawyer’s argument. If the writer fails, however, the minds of readers haphazardly stray to myriad diversions concerning pronouns, language, sexism, and society.”); see also Narko, *supra* note 97, at 51 (“I counsel attorneys and students to write conservatively, that is, to follow the traditional rules of grammar. A brief writer does not want his or her style to interfere with a judge’s reading of the brief.”). Even readers who do not perceive a particular deviation as an error may nevertheless be distracted from the argument by an unconventional usage, and with respect to the singular *they* specifically may see it as a statement on gender or gender identity. See GARNER, *supra* note 97, at 202 (“The constructions with *they*, *them*, *their*, and *themselves* aren’t uncontroversial . . . so please understand that any visible choice you make is likely to bother some number of readers. Anything apart from invisible gender-neutrality will be seen by some as a political statement.”).

103 David Foster Wallace observes that even when one can understand a sentence that fails to follow a usage rule, that understanding requires some extra parsing that would not be necessary if the rules were followed. “[M]any of these solecisms—or even just clunky redundancies like ‘The door was rectangular in shape’—require at least a couple extra nanoseconds of cognitive effort, a kind of rapid sift-and-discard process, before the recipient gets it. Extra work.” WALLACE, *supra* note 28, at 93.

104 GARNER, *supra* note 33, at 595.

for the singular *he* or *she*. Although *they* and *their* have become common in informal usage, neither is considered acceptable in formal writing.”¹⁰⁵

Yet, Garner recognizes the principle that what constitutes correct usage is a moving target that is ultimately validated by actual usage.¹⁰⁶ Seemingly with that understanding in mind, Garner now avoids offering a blanket proscription against singular *they* in legal writing, but instead cautions that a legal writer who uses singular *they* may offend certain audience members.

While this usage is increasingly accepted in speech and informal writing, it has only recently gained ground in more formal writing—including a few U.S. Supreme Court opinions. Yet despite the official approval in some style manuals of the singular *they*, a 2018 poll found that half of American readers consider it objectionable. So be forewarned.¹⁰⁷

Garner’s thoughts reflect a larger consensus within legal writing usage guides: one that recognizes that the singular *they* is gaining in acceptance and likely will continue to do so. Indeed, several legal writing experts explicitly acknowledge that legal writing will one day recognize the singular *they*, as Suzanne Rowe did in 2007. “While [the singular *they*] will sound fine to most people in informal speech, it would likely raise a number of eyebrows in a formal legal document. I’ll still mark it wrong on student papers, but I suspect that in 10 years I won’t.”¹⁰⁸ A leading style manual echoed this conclusion in 2018. “The singular *they* . . . will eventually be acceptable in formal writing. The trend, considered irreversible at the end of the twentieth century, is now stronger than ever.”¹⁰⁹ And another prominent legal writing style guide echoed this sentiment

105 BARON, *supra* note 1, at 175 (quoting Bryan Garner’s article in *THE CHICAGO MANUAL OF STYLE* (2010)).

106 “Although the notion of linguistic correctness may seem absolute—right or wrong—it is mutable. Words change over time: they grow new meanings and shed old ones. Usually these changes are extremely gradual. Our language remains relatively stable, each generation understanding the language of those who came before. Occasionally, however, change is abrupt. Today, the progress of technology, especially communications technology, has stepped up the pace. New words—and new meanings for old words—now spring up almost overnight. But that doesn’t mean we should abandon the idea of correctness in word usage. What is ‘correct’ (some prefer to say ‘appropriate’) is a word choice that, in a given age, has two characteristics: (1) it is consistent with historical usage, especially that of the immediate past, and (2) it preserves valuable distinctions that careful writers have cultivated over time. By meeting these standards, the legal writer achieves a greater degree of credibility with an educated readership.” GARNER, *supra* note 97, at 245 (contained within a section on “Troublesome Words,” and specifically discussing “Correctness”).

107 GARNER, *supra* note 97, at 204. “If you’re comfortable doing so, if no imprecision results, and if you’re willing to risk a raised eyebrow from some readers, use *they* as a gender-neutral singular.” *Id.* at 375. Compare GIDI & WEIHOFEN, *supra* note 16, at 27 (suggesting the singular *they* as a possible generic singular pronoun solution, but with the qualifier that it is controversial, and stating more generally that English lacks a gender-neutral third-person singular pronoun).

108 Rowe, *supra* note 47; see also ENQUIST, OATES & FRANCIS, *supra* note 5, at 631; Narko, *supra* note 97, at 52 (“My advice may be different in the not-too-distant future. A generational change is afoot. All of us should consider changes in how we use pronouns.”).

109 GIDI & WEIHOFEN, *supra* note 16, at 31.

in 2016, counseling that the singular *they* would likely be accepted within legal writing in a “few years.”¹¹⁰

This sense of fatalism is common not only to legal writing teachers but to usage experts generally. “Long ago, *they*, like *you*, took on the dual role of singular and plural, and singular *they* has been so well established, for so many centuries, that at this point resistance is futile.”¹¹¹

And putting aside the descriptivist argument that legal writing must inevitably accept the singular *they* because it is ever more commonly used, even when viewed through a prescriptive lens, the singular *they* is the best solution when compared to other generic pronoun solutions because it is grammatical, simple, and inclusive.

Even before the generic masculine fell into disfavor, many alternative pronouns were suggested as a singular generic pronoun. The generic feminine—*she*, *her*, *hers*—has been forwarded as a kind of affirmative action corrective to the generic masculine.¹¹² But used exclusively, it lacks inclusion for the same reasons as the generic masculine. That is, *she* fails the gender agreement rule to the same degree that *he* does.¹¹³ Some suggest alternating generic masculine and generic feminine,¹¹⁴ but that may confuse the reader.¹¹⁵

Feminists advocated for the paired pronoun, *he or she*, to replace the generic masculine. But the paired pronoun is almost universally derided. Critics call it “awkward” and “so clumsy as to be ridiculous except when explicitness is urgent, & it usually sounds like a bit of pedantic humor.”¹¹⁶ The seemingly visceral dislike of the paired pronoun may spring from the

110 GOLDSTEIN & LIEBERMAN, *supra* note 44, at 151.

111 BARON, *supra* note 1, at 152.

112 MARILYN SCHWARTZ & THE TASK FORCE ON BIAS-FREE LANGUAGE OF THE ASS'N OF AM. UNIV. PRESSES, GUIDELINES FOR BIAS-FREE WRITING 20–21 (1995); see Johnson, *supra* note 1, at 36. Dr. Benjamin Spock switched the generic pronouns from masculine to feminine in later editions of his best-selling *Dr. Spock's Baby and Child Care*. See BARON, *supra* note 1, at 28–29.

113 Johnson, *supra* note 1, at 36.

114 GARNER, *supra* note 97, at 375 (noting its use by some writers). Supreme Court Justice Ruth Bader Ginsburg commonly employed this tactic by alternating between using the generic masculine and the generic feminine within the same opinion. See, e.g., *Taylor v. Sturgell*, 553 U.S. 880, 895 (2008) (“[A] nonparty is bound by a judgment if she ‘assume[d] control’ over the litigation. . . . Because such a person has had ‘the opportunity to present proofs and argument,’ he has already ‘had his day in court’ even though he was not a formal party to the litigation.”). Justice John Paul Stevens also alternated generic pronouns. See, e.g., *Palazzolo v. Rhode Island*, 533 U.S. 606, 638 (2001) (Stevens, J., concurring). Some observers recommend alternating pronouns selectively by, for instance, making particular generic characters male and others female. Rowe, *supra* note 47. Alternatively, in criminal cases, the writer may make all of the generic pronouns match the defendant’s gender, so that in a case where the defendant is female the writer exclusively employs the generic feminine. Interview with Elizabeth L. Harris, Judge, Colorado Court of Appeals, Denver, Colo. (Dec. 12, 2020).

115 Johnson, *supra* note 1, at 36.

116 FOWLER, *supra* note 3, at 392; Salmon, *supra* note 100, at 10; see also GARNER, *supra* note 97, at 375 (“This is a last-resort option because the phrase usually sounds stilted. Used in excess, it becomes obnoxious.”); H.L. MENCKEN, *THE AMERICAN LANGUAGE* 210 (1919) (ebook), (calling the paired pronoun “intolerably clumsy”); STRUNK & WHITE, *supra* note 87, at 60 (labeling the paired pronoun “boring or silly”).

fact that it negates the primary value of pronouns, simplicity, by using two terms in the place of a single noun.¹¹⁷ Thus, as one writer put it, the paired pronoun is “painfully grammatical.”¹¹⁸

But it is not even that. For the paired pronoun fails to observe the same grammatical rule of gender agreement that also renders the generic masculine or generic feminine pronouns ungrammatical. Just as the generic masculine pronoun rendered women invisible, and the generic feminine renders men invisible, the paired pronoun renders non-binary individuals invisible, as it lacks gender agreement with individuals who do not identify as cisgender.¹¹⁹

In a bid to solve the inclusion problem, many attempts have been made to coin a new generic third-person singular pronoun. Dennis Baron has catalogued over two hundred such instances, including *thon*, *hir*, and *ze*.¹²⁰

Many of these neologisms share the virtue of clarity and simplicity. But they also illustrate the foundational rule that English grammar is validated by usage. None of these hundreds of neologisms has gained the kind of widespread acceptance and everyday usage that would make it a practical solution to legal writing’s pronoun problem. As Baron puts it after having exhaustively compiled them, the neologisms fall into the category of “failed” pronouns, along with the sexist *he* and the clumsy *he or she*.¹²¹

Singular *they* solves all of the problems of the failed pronouns as it is grammatical, simple, and inclusive. While the generic masculine and paired pronouns fail the grammatical test of gender agreement, *they* is grammatical as it is both gender-neutral and has functioned as a singular pronoun since the advent of modern English.¹²² The argument that *they* is

¹¹⁷ GIDI & WEIHOFEN, *supra* note 16, at 26 (“[H]e or she is not conducive to good writing style: it’s wordy, it’s long, it’s weak, it’s slow.”).

¹¹⁸ BARON, *supra* note 1, at 171 (quoting *We*, NASHVILLE DAILY AM., Feb. 28, 1886, at 2).

¹¹⁹ BARON, *supra* note 1, at 28; Salmon, *supra* note 100, at 10. One solution to the inclusion problem with *he or she* is to transform the “paired pronoun” into a “triplet pronoun”: *he, she, or they*. To be truly inclusive, the writer needs to employ the “quadruplet pronoun”: *he, she, it, or they*. But by solving the inclusion problem the quadruplet pronoun doubles down on the complexity problem created by the paired pronoun. Pronouns exist to give speakers and writers a simple means of referring to people, places, or things without having to repeat the noun over and over, and these alternatives negate that advantage.

¹²⁰ BARON, *supra* note 1, at 111, 185–245. One category of neologisms consists of efforts to weld the masculine and feminine generics into one another, as in *he/she*, *s/he*, *(s)he*, and *he(she)*. These constructions have suffered not just rejection but scorn. FRANCINE WATTMAN FRANK & PAULA A. TREICHLER, LANGUAGE, GENDER, AND PROFESSIONAL WRITING 161 (1989) (noting a study indicating that slash neologisms are not widely accepted). Writers observe that such a creation, most generously, “does not have a clear counterpart in the spoken language,” or, more plainly, is “literally unspeakable.” *Id.*; WILLIAM SAFIRE, I STAND CORRECTED: MORE ON LANGUAGE 179 (1986).

¹²¹ BARON, *supra* note 1, at 111.

¹²² Cobb, *supra* note 2, at 15 (“More radically, maybe the singular ‘they’ isn’t even ungrammatical. The singular generic ‘they’ certainly isn’t new. You can find examples in classics like Chaucer, Shakespeare, and the Bible, and in prestigious modern literature and scholarship as well. The *Washington Law Review* has endorsed it. Even style guides have begun to change with the times. And the entire U.K. is OK with the singular ‘they.’”).

ungrammatical rests on a foundation of androcentrism, as well as the lie that only the illiterate employ the singular *they*. In continuing to follow this proscription, legal writing perpetuates that lie.¹²³

The neologisms have failed because they are not used, but *they* has been used as a singular generic pronoun for as long as English has been written and spoken. Indeed, while none of the neologisms have ever gained wide use, *they* not only has been used widely, but has continued to be used despite a two hundred year prescriptivist campaign to eradicate it.¹²⁴

They is simple. *They* is also precise because it is gender-neutral. By way of contrast, the use of the gender masculine lacks precision and introduces ambiguity with respect to the gender it references.¹²⁵ In that regard, the legislation of the “masculine includes the feminine” canon only added ambiguity concerning exactly when *he* is intended to refer to all genders and when it is intended to refer only to the male gender. “A New York judicial committee observed that gender-biased language often sacrifices clarity. When certain words sometimes mean males, sometimes mean females, and sometimes include both sexes, confusion may result.”¹²⁶ In one instance, a court reversed a woman’s second-degree

123 See *id.* (“I can’t help giving legal readers some friendly advice, too. Stop being so finicky! It’s normal for language to change in response to social changes or even to just drift. Over time, the plural ‘you’ came to replace the singular ‘thou’ . . . And it was 18th century grammarians who installed ‘he’ as the default genderless pronoun by influencing grammar school texts. . . . Given this push and pull, and stronger and stronger consensus about the singular ‘they,’ it’s no longer fair to infer that writers who embrace the singular ‘they’ lack basic education, grammatical knowledge, or professionalism.”); Salmon, *supra* note 100, at 10 (“They is now a singular, gender-neutral pronoun. Maybe we should accept it and move on with our lives.”).

124 Bodine, *supra* note 2, at 131 (“This usage came under attack by prescriptive grammarians. However, despite almost two centuries of vigorous attempts to analyze and regulate it out of existence, singular ‘they’ is alive and well. Its survival is all the more remarkable considering that the weight of virtually the entire educational and publishing establishment has been behind the attempt to eradicate it.”); see also BARON, *supra* note 1, at 180 (“[P]ronouns are political, and as they once called attention to women’s rights, today coined pronouns call attention as well to the rights of nonbinary and trans persons.”).

125 The legislative canon that the masculine includes the feminine has oftentimes been selectively applied when it would create an obligation that applies equally to females, and not applied when it would extend a privilege to females. BARON, *supra* note 1, at 76–77 (“[L]egislating the meaning of pronouns through broad measures like the 1850 Act of Interpretation in Britain or the 1871 Dictionary Act in the United States, which are still in force today . . . failed to make the masculine pronoun generic in the law.”); BARON, *supra* note 17, at 139 (“[T]he word ‘man’ always includes ‘woman’ when there is a penalty to be incurred, and never includes ‘woman’ when there is a privilege to be conferred.”). For example, in the case of *State v. James*, 114 A. 553, 555 (N.J. 1921), a court rejected application of the canon when it held that a statute describing jury qualifications which used the masculine pronoun *he* limited jury service to males only. See Fischer, *supra* note 2, at 488. Conversely, male legislators fretted that they had opened up a Pandora’s Box by introducing the “masculine includes the feminine” canon because it might be used to argue for the extension of male-only privileges to women. For that reason, the Interpretation Act itself came under attack just one year after its passage. Backers of a repeal effort within the House of Commons feared that the “masculine includes the feminine” canon might be employed to include females when it came to the right to vote. BARON, *supra* note 17, at 139–40. The repeal effort was turned back largely on the strength of the argument that it was implausible that the canon would ever be construed to extend suffrage to women. Carter, *supra* note 70, at 49–50. As one observer noted with respect to a later effort to employ the canon in this manner, “The fact that the exclusion of the sex from political life has hitherto been secured by the simple use of the masculine pronoun, without any special legislation, illustrates how absolutely inconceivable and unnatural the idea of Women’s Suffrage has hitherto seemed. If it were ever to be realized, we should have to . . . watch our pronouns.” BARON, *supra* note 1, at 39–40. This argument laid bare the legislative intent that the generic masculine was intended to reinforce male dominance.

126 Fischer, *supra* note 2, at 487.

murder conviction because a self-defense jury instruction used only the pronoun *he*. The jury surmised that the five-foot four-inch woman, who was on crutches, must be judged according to the reasonableness standard that would be applied to a larger, stronger man because the masculine pronoun appeared to require it.¹²⁷ As one observer noted, the “masculine includes the feminine” canon creates confusion because legislators, officials, and experienced legal practitioners lose sight of it and thus apply it inconsistently.¹²⁸ *They* cures that confusion because it is unambiguously gender-neutral.

Also, *they* is the most precise, least ambiguous solution when attempting to hide the identity of the subject.¹²⁹ In 2018, the *New York Times* published an op-ed by a high-level White House official regarding the efforts of White House insiders to curb the President’s tendency to act impulsively. Discussing the need to cloak the writer’s identity, editor James Deo said, “It was clear early on that the writer wanted anonymity, but we didn’t grant anything until we read it and were confident that *they* were who *they* said *they* were.”¹³⁰

They is inclusive. By definition, *they* applies equally to the cisgender masculine, the cisgender feminine, the nonbinary or to individuals without gender or whose gender is concealed.¹³¹ Because it is not defined by cisgender categories, *they* also serves non-binary individuals as a personal pronoun. The distinction between generic pronouns and personal pronouns is that the former refer to an unknown individual or a representative of a class, e.g., “someone,” while the latter refer to a particular individual, as in the sentence, “When Hayden graduated from law school, they achieved a lifelong ambition.”¹³²

The use of singular *they* as a personal pronoun has quickly gained widespread attention and acceptance, so much so that the American

127 *Id.* at 488.

128 Carter, *supra* note 70, at 46 (referencing the remarks of Geoff Lawn at the inaugural George Tanner Memorial Address at the 2014 Australasian Parliamentary Counsel’s Committee’s Conference).

129 Dennis Baron, *Gender Conceal: Did You Know that Pronouns Can Also Hide Someone’s Gender?*, THE WEB OF LANGUAGE (Nov. 9, 2019, 4:15 PM), <https://blogs.illinois.edu/view/25/804302> (discussing the use of the singular *they* to refer to someone whose gender needs to be concealed as part of an effort to hide the individual’s identity, using the example of journalistic references to whistleblowers).

130 Michael M. Grynbaum, *Anonymous Op-Ed in New York Times Causes a Stir Online and in the White House*, N.Y. TIMES (Sept. 5, 2018), <https://www.nytimes.com/2018/09/05/business/media/new-york-times-trump-anonymous.html> (emphasis added).

131 Baron, *supra* note 129 (discussing the use of the singular *they* to refer to someone whose gender needs to be concealed, e.g., a whistleblower).

132 See Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 957 (2019) (“Most transgender people, including many who identify as nonbinary, use gendered pronouns such as he and she. However, 29% of transgender respondents to the [United States Transgender Survey] stated that they use ‘they/them’ pronouns.”).

Dialect Society, a leading group of grammarians, named singular *they* used as a personal pronoun its Word of the Year for 2015.¹³³

And, while the emergence of singular *they* as a personal pronoun used by nonbinary individuals constitutes a separate development from its use as a generic pronoun, the uses of singular *they* as both a personal and generic pronoun are mutually supportive. Indeed, Ann Bodine's thesis that changes in social conditions spur changes in pronomial usage suggests the reason why the use of singular *they* as a personal pronoun is in ascendance. It also portends the ultimate acceptance of singular *they* as a generic pronoun in legal writing as it has been accepted in other forms. While her argument in 1975 spoke directly to the feminist effort to displace the hegemony of the generic masculine that rendered females invisible, it carries equal weight today where the focus has shifted to recognizing the identity of non-binary individuals.

Personal reference, including personal pronouns, is one of the most socially significant aspects of language. . . . With the increase of opposition to sex-based hierarchy, the structure of English third person pronouns may be expected to change to reflect the new ideology and social practices, as second person pronouns did before them.¹³⁴

IV. Legal writers can and should employ non-pronoun alternatives when the singular *they* produces ambiguity

Yet, legal writing still has a pronoun problem. Even though *they* is grammatically correct as a singular pronoun, *they* may still be incorrect for legal writing where its use creates ambiguity.

In legal writing, precision is paramount. In particular, legislation and contracts must be clear.¹³⁵ Rules and contractual provisions written at one time by one author must be comprehensible at another time by those who are obligated to enforce or follow those rules and provisions. Where ambiguities arise, rules become subject to differing interpretations and fail to function.¹³⁶

¹³³ Charles & Meyers, *supra* note 43, at 39.

¹³⁴ Bodine, *supra* note 2, at 144.

¹³⁵ GARNER, *supra* note 97, at 591 ("As with almost all other writing, legislative drafting has as its touchstones clarity, accuracy, and brevity—clarity being foremost").

¹³⁶ *Id.* at 561 ("On the one hand, a contract should be readable so that the parties will understand their rights and duties. On the other hand, it must be unmistakable in its meaning, since whenever a disagreement arises each party will interpret the contract in its own favor. Unlike most other documents, contracts can be subjected to willful perversions of meaning. So the wordings must be so clear that they foreclose frivolous positions about what they mean.").

“Pronouns are ambiguous, especially gender pronouns, especially in the law.”¹³⁷ In most instances, it’s not that *they* specifically is ambiguous. But rather, pronouns generally may create ambiguity.

Fundamentally, pronouns simplify language, rescuing the speaker from having to repeat nouns, while aiding the listener’s comprehension by providing references to those nouns.¹³⁸ And simplicity produces clarity, according with modern legal writing’s primary aim of communicating precisely in plain English.¹³⁹

However, in certain instances, simplicity and clarity are at odds with each other. That is, clarity may require explanation, making writing less simple. Thus, while pronouns generally simplify writing and promote clarity, pronouns can also cause ambiguity and defeat clarity.¹⁴⁰

The problems of ambiguity that occur with pronoun usage are generally not a problem with *they* specifically, but with pronouns as they are used in particular instances. Take the example of multiple antecedents. If a pronoun is preceded by more than one noun in the same sentence, confusion can arise concerning which noun the pronoun refers to, as in the sentence, “Paul was speaking to Robert on the phone when his cell signal dropped out.” It is unclear whether the pronoun refers to the first individual or the second individual.

One study analyzed more than eighty cases in which the authors reported that the use of singular *they* had produced ambiguity. In all of the examples that the study elaborated, the ambiguity arose in instances when *they* was used in reference to multiple antecedents. After surveying the cases, the authors concluded, “In short, ambiguity lurks when *they* follows two or more people or things.”¹⁴¹

But that confusion would be the same even if a different pronoun was used, for instance, when a seller and buyer complete a real estate transaction, he or she is responsible for recording the deed.¹⁴² Thus, the ambiguity arises from sentences with multiple antecedents, here the

137 Dennis Baron, *There Are No Pronouns in the Nineteenth Amendment*, THE WEB OF LANGUAGE (Aug. 12, 2020, 12:00 PM), <https://blogs.illinois.edu/view/25/309444150>.

138 “One of the main functions of pronouns” is to “attract as little attention as possible while pointing to an antecedent.” Burlingame, *supra* note 48, at 99 (“Pronouns are defined as words that are used in the place of nouns.”); GARNER, *supra* note 97, at 200 (“A pronoun is a word that stands in for a noun.”).

139 The 1850 Interpretation Act included numerous other provisions aimed at simplifying and shortening legislative language while making it more uniform and consistent. It has been periodically re-enacted and expanded, and its form has been replicated in other countries. Carter, *supra* note 70, at 11–13, 16–18, 32–35. Modern interpretation acts generally avoid creating canons of construction that apply only to a particular gender out of a concern for creating ambiguity. *Id.* at 50.

140 FOWLER, *supra* note 3, at 464 (“Pronouns & pronomial adjectives are rather tricky than difficult.”).

141 Charles & Meyers, *supra* note 43, at 39.

142 See Eagleson, *supra* note 7, at 93 (demonstrating that utilizing singular pronouns other than *they* does not solve the multiple antecedent problem).

“seller” and “buyer,” not with the choice of pronoun. As Garner counsels, the best course is to reword the sentence to avoid multiple antecedents.¹⁴³ Likewise, the author of the case study did not conclude that the singular *they* should not be used, but rather that writers should take care when using it and either repeat the noun or otherwise reconstruct a sentence containing multiple antecedents.¹⁴⁴

Paul Salembier points out the particular problem that arises in the multiple antecedent context when one of the antecedents is singular and the other plural. “Where an applicant notifies the other residents, they must lodge a section 12 notice within 14 days.”¹⁴⁵ There he insists that the problem is with the singular *they*. That is, if *they* was considered only a plural pronoun, then it would eliminate the ambiguity.¹⁴⁶ But, as centuries of usage has proven, *they* is not only a plural pronoun, just as *you* is not only a plural pronoun. Salembier seems to suggest that if all English speakers will simply agree that *they* can only be used as a plural pronoun, then it will cure the potential for ambiguity in this narrow instance. But English usage crossed that bridge centuries ago when speakers and writers employed *they* both as a singular and plural pronoun. To be sure, using *they* in the sentence Salembier describes will cause ambiguity because the reader will not know whether it refers to the singular “applicant” or the plural “residents.” But, again, the same ambiguity would arise if any pronoun were used in the same place. The problem occurs with pronouns generally, not *they* specifically. In such limited instances, a non-pronoun alternative will promote clarity.

But legal writing style guides take that view to its extreme by teaching writers to abandon the use of generic singular third-person pronouns in *all* instances.¹⁴⁷ Several alternatives to pronouns are proposed, among them the following.

143 GARNER, *supra* note 97, at 205.

144 Charles & Meyers, *supra* note 43, at 39; see LECLEERCQ & MIKA, *supra* note 44, at 28 (counseling writers to replace pronouns with nouns in instances of multiple pronoun antecedents).

145 Salembier, *supra* note 5, at 178 (quoting Eagleson, *supra* note 7, at 93).

146 *Id.*

147 GARNER, *supra* note 97, at 202 (counseling the use of non-pronoun alternatives to generic pronouns as a means to avoid distracting the reader with pronouns that may be seen as sexist, clumsy, or grammatically incorrect).

**Non-pronoun
alternative to use
of generic pronoun**

Example Sentence

Pluralizing the noun¹⁴⁸

When plaintiffs commence an action by service of process, they must also file the complaint with the court.

Repeating the noun¹⁴⁹

When a plaintiff commences an action by service of process, the plaintiff must also file the complaint with the court.

**Omitting the pronoun
through the use of the
“to be” verb form¹⁵⁰**

When a plaintiff commences an action by service of process, there must also be a filing of the complaint with the court.

**Employing passive
voice¹⁵¹**

When a plaintiff commences an action by service of process, the complaint must also be filed with the court.

Of these alternatives, repeating the noun has a lot of fans, and is well suited to fix the problem of multiple antecedents.¹⁵² Pluralizing the noun is also seen as a solution that works for many sentences.¹⁵³

The alternatives generally share the virtue of avoiding ambiguity. But each has its problems.¹⁵⁴ Each of them frustrates the writer’s effort to write simply, which at bottom is the service that pronouns provide.¹⁵⁵ The very fact that the writer must employ an alternative ensures that the resulting sentence is necessarily second best.¹⁵⁶

¹⁴⁸ *Id.* at 374–75; SHAPO, *supra* note 97, at 241; Johnson, *supra* note 1, at 36.

¹⁴⁹ CUPPLES & TEMPLE-SMITH, *supra* note 46, at 33 (“Writers who prioritize precision over style (e.g., legal, technical, or scientific writers) should consider repeating the antecedent.”); GARNER, *supra* note 97, at 375; Johnson, *supra* note 1, at 36.

¹⁵⁰ Johnson, *supra* note 1, at 36; Rowe, *supra* note 47 (noting that in the case of the possessive pronoun a generic gender pronoun can oftentimes be replaced with “the,” as in “the attorney” for “his attorney”).

¹⁵¹ SHAPO, *supra* note 97, at 242 (“When all else fails, try the passive voice.”).

¹⁵² Rowe, *supra* note 47 (“This solution is especially effective if there’s a gap of several words between the noun and the pronoun.”).

¹⁵³ *Id.* (“Often a sentence will be just as clear if the singular noun is changed to a plural noun.”).

¹⁵⁴ “No clear path from the labyrinth has emerged.” Burlingame, *supra* note 48, at 109 (discussing advantages and

disadvantages of pronoun and non-pronoun alternatives to the generic masculine).

¹⁵⁵ *Id.* at 99 (“[O]ne of the main functions of pronouns [is] to attract as little attention as possible while pointing to an antecedent.”); Fischer, *supra* note 2, at 492 (recommending repeating the noun among other options, while also noting that it may be “repetitive and wordy”); Johnson, *supra* note 1, at 36 (advocating for omitting the pronoun or repeating the noun as the least bad alternatives, but also urging the use of singular *they* when any alternative is awkward).

¹⁵⁶ Johnson, *supra* note 1, at 36 (acknowledging that alternatives such as omitting the pronoun or repeating the noun achieve gender neutrality, but nevertheless urging adoption of a generic pronoun to employ when any alternative is awkward). Bryan Garner cautions that legal writers have “overlearned the lesson” that pronouns may in certain cases cause ambiguity, leading some to dispense with pronouns entirely. This election results in stiff, unnatural sentences that “read as if they have been translated from the German by someone who barely knows English.” BRYAN A. GARNER, GARNER’S DICTIONARY OF LEGAL USAGE 718 (3d ed. 2011).

Outside of the multiple antecedent case where not just *they* but any pronoun should be avoided in order to avoid ambiguity, forcing the writer to give up a pronoun option defeats simplicity and thus diminishes clarity. “[T]he number of times that sentences with this potential ambiguity [of multiple antecedents] actually arise in legislation and legal documents is relatively rare. We should not allow exceptions to frustrate us from using a valuable device and force us into a cumbersome one.”¹⁵⁷

In many instances, *they* is the simplest and thus the clearest alternative. Even readers who perceive the use of singular *they* as incorrect are not confused by it. Consider the following sentence: “Before a lawyer begins to practice, he must sit for and pass the Bar exam.” In reading that sentence, the reader perceives the subject to be a male, and for that reason the canon of construction may be applied such that *he* could refer to a person of any gender. Or, perhaps the canon does not apply and the legislation intends a gender limitation.¹⁵⁸ The meaning is ambiguous. By contrast, consider this change: “Before a lawyer begins to practice, they must sit for and pass the Bar exam.” Even the reader who considers this sentence ungrammatical comprehends that *they* unambiguously refers to the “lawyer” as a singular generic person who may be cisgender or nonbinary. It is no surprise that readers easily comprehend this usage since *they* has been used as a singular pronoun for centuries. As compared to non-pronoun alternatives such as employing passive voice (“the Bar exam must be taken and passed”), *they* is just as unambiguous, if not more unambiguous by explicitly including individuals of any gender or no gender.

Nevertheless, as Dennis Baron points out, “It’s true that having the same pronoun for both singular and plural can be ambiguous.”¹⁵⁹ But context generally clarifies whether *they* is meant to refer to the singular or the plural, just as context indicates whether *you* refers to an individual or a group.

And, the reader’s comprehension of *they* as both singular and plural can be compared to the reader’s implicit understanding of a generic noun as possibly both singular and plural. Consider the following sentence. “A surgeon must don a mask before they begin a procedure.” In reading the rule, the reader implicitly understands that, in a particular instance, there could be more than one surgeon who participates in the surgery, and that the rule would apply equally to both the singular surgeon and the plural surgeons. Indeed, pluralizing the noun is one of the most common alternatives to the use of a singular generic pronoun—“Surgeons must

¹⁵⁷ Eagleson, *supra* note 7, at 94 (suggesting repeating the noun as a solution to the multiple antecedent problem).

¹⁵⁸ See *supra* note 119 regarding inconsistent application of the “masculine includes the feminine” canon.

¹⁵⁹ BARON, *supra* note 1, at 165.

don masks before they begin a procedure”—and it relies on the reader’s implicit understanding when it comes to generic nouns that the singular includes the plural and the plural includes the singular.¹⁶⁰ For the same reason, *they* functions effectively as a generic pronoun: the reader understands implicitly that *they* can refer either to a singular or plural noun.

Conclusion

Thus, the singular *they* exists not as the only acceptable usage when a singular generic pronoun is called for, but as one of the available alternatives when a legal writer seeks simplicity and clarity.¹⁶¹ Legal writing should abandon the proscription against the singular *they* that was founded on androcentrism, and instead promote this grammatical, simple, and inclusive solution to fill the blank.

Appendix A – Example usages of *they* as a singular third-person generic pronoun through history in common usage and literary works¹⁶²

- Each man hurried . . . till they drew near . . . where William and his darling were lying together.
—William and the Werewolf (1375) (translated to modern English from Middle English)¹⁶³
- No one in the whole country was brave enough to oppose them, because they were so afraid of them.
—Three Kings of Cologne (c. 1400) (translated to modern English from Middle English)¹⁶⁴
- There’s not a man I meet but doth salute me as if I were their well-acquainted friend.
—William Shakespeare, *A Comedy of Errors* (1594)¹⁶⁵

¹⁶⁰ See Salembier, *supra* note 5, at 183 (“Though, as a practice, most legislative provisions are drafted in the singular, the Interpretation Acts of most jurisdictions provide that the singular includes the plural and vice versa.”); see also Schweikart, *supra* note 12, at 2 (noting that the “plural includes the singular” canon of statutory construction implies that, even if *they* is taken as plural, it may be used as a generic pronoun to include the singular).

¹⁶¹ Eagleson, *supra* note 7, at 94–95 (“Just because the rules of grammar say that we may substitute pronouns for nouns does not mean that we should always do so. So it is with they. Writers may—and should—use it in the contexts we recommend because it promotes a smoother, less cumbersome text, but writers need to exercise care with it, as with every other item of language, to avoid any ambiguity or trace of confusion.”).

¹⁶² After the chronological list this appendix groups references from MCKNIGHT, *supra* note 82 and Eagleson, *supra* note 7, two scholars who made a point of aggregating these examples in their work.

¹⁶³ Baron, *supra* note 10.

¹⁶⁴ BARON, *supra* note 1, at 150 (quoting the *Oxford English Dictionary*).

¹⁶⁵ *Id.* at 155.

- The jury, passing on the prisoner's life/May in the sworn twelve have a thief or two/Guiltier than him they try.
—William Shakespeare, *Measure for Measure* (1604)¹⁶⁶
- So likewise shall my heavenly Father do also unto you, if ye from your hearts forgive not everyone his brother their trespasses.
—The Bible (King James Version 1611)¹⁶⁷
- I always delight in . . . cheating a person of their premeditated contempt.
—Jane Austen, *Pride & Prejudice* (1813)¹⁶⁸
- To be sure, you knew no actual good of me—but nobody thinks of that when they fall in love.
—Jane Austen, *Pride & Prejudice* (1813)¹⁶⁹
- I cannot pretend to be sorry . . . that he or that any man should not be estimated beyond their deserts.
—Jane Austen, *Pride & Prejudice* (1813)¹⁷⁰
- [H]ave everybody marry if they can.
—Jane Austen, *Mansfield Park* (1814)¹⁷¹
- [N]obody put themselves out of the way.
—Jane Austen, *Mansfield Park* (1814)¹⁷²
- Who makes you their confidant?
—Jane Austen, *Emma* (1816)¹⁷³
- The person, whoever it was, had come in so suddenly and with so little noise, that Mr. Pickwick had had no time to call out, or oppose their entrance.
—Charles Dickens, *The Pickwick Papers* (1837)¹⁷⁴
- A person can't help their birth.
—William Makepeace Thackeray, *Vanity Fair* (1848)¹⁷⁵
- But how can you talk with a person if they always say the same thing?
—Lewis Carroll, *Alice's Adventures in Wonderland* (1865)¹⁷⁶

166 WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* 39 (ebook).

167 Eagleson, *supra* note 7, at 96.

168 BARON, *supra* note 1, at 155 (citing Berry, *supra* note 18).

169 Berry, *supra* note 172; McCulloch, *supra* note 18.

170 McCulloch, *supra* note 18.

171 MCKNIGHT, *supra* note 82, at 528 (emphasis omitted).

172 *Id.* (emphasis omitted).

173 BARON, *supra* note 1, at 169.

174 *Id.* at 118.

175 *Id.* at 169.

176 Eagleson, *supra* note 7, at 96.

- I never refuse to help anybody, if they've a mind to do themselves justice.
—George Eliot, *The Mill on the Floss* (1867)¹⁷⁷
- Some people say that if you are very fond of a person you always think them handsome.
—Henry James, *Confidence* (1879)¹⁷⁸
- Unless a person takes a deal of exercise, they may soon eat more than does them good.
—Herbert Spencer, *Autobiography* (1904)¹⁷⁹
- As for a doctor . . . what use were they except to tell you what you already knew?
—John Galsworthy, *The Country House* (1907)¹⁸⁰
- [E]ach person stretched backwards covering themselves.
—James Stephens, *The Demi-Gods* (1914)¹⁸¹
- [B]ut every body must act exactly as they are able to act.
—James Stephens, *The Demi-Gods* (1914)¹⁸²
- I know when I like a person directly I see them.
—Virginia Woolf, *The Voyage Out* (1915)¹⁸³
- [E]veryone always puts their boots on in the kitchen.
—E. S. Wilkinson, *Blackwood's, Living Age* (1919)¹⁸⁴
- [E]ach generation of people begins by thinking they've got it.
—Rose Macaulay, *Told by an Idiot* (1923)¹⁸⁵
- I cut no one, except when I'm afraid of being bored by them.
—Rose Macaulay, *Told by an Idiot* (1923)¹⁸⁶
- If he fought anybody he'd kill them.
—Margaret Kennedy, *The Constant Nymph* (1924)¹⁸⁷
- Let no voter abdicate their sovereign right of self-government at the election on Tuesday by failing to vote.
—Calvin Coolidge (1926)¹⁸⁸
- It is fatal for anyone who writes to think of their sex.
—Virginia Woolf, *A Room of One's Own* (1929)¹⁸⁹

177 BARON, *supra* note 1, at 169.

178 HENRY JAMES, *THE COMPLETE WORKS OF HENRY JAMES* 760 (2018).

179 BARON, *supra* note 1, at 169.

180 *Id.* at 170.

181 MCKNIGHT, *supra* note 82, at 530 (emphasis omitted).

182 *Id.* (emphasis omitted).

183 Eagleson, *supra* note 7, at 97.

184 MCKNIGHT, *supra* note 82, at 529 (emphasis omitted).

185 *Id.* (emphasis omitted).

186 *Id.* (emphasis omitted).

187 *Id.* at 530 (emphasis omitted).

188 BARON, *supra* note 1, at 118.

189 *Id.* at 155.

- Nobody would ever marry if they thought it over.
—George Bernard Shaw, *Village Wooing* (1934)¹⁹⁰
- And if anyone doubts that democracy is alive and well, let them come to New Hampshire.
—Ronald Reagan (1985)¹⁹¹
- If anyone tells you that America’s best days are behind her, they’re looking the wrong way.
—George H.W. Bush (1991)¹⁹²
- No American should ever live under a cloud of suspicion just because of what they look like.
—Barack Obama (2012)¹⁹³
- [E]very man went to their lodging.
—Lord Berners, *Transl. of Froissart* (1523–25)¹⁹⁴
- Every servant in their maysters lyverey.
—Lord Berners, *Transl. of Froissart* (1523–25)¹⁹⁵
- [E]very one prepared themselves.
—A *Petite Pallace of Pettie His Pleasures* (1908)¹⁹⁶
- [E]very horse had been groomed with as much rigour as if they belonged to a private gentleman.
—Thomas De Quincey, *English Mail Coach* (1849)¹⁹⁷
- [T]he majority of mankind . . . quite consistent with their being.
—Matthew Arnold, *Literature and Science* (1882)¹⁹⁸
- [H]is great concern being to make every one at their ease.
—Cardinal Newman, *Knowledge Viewed in Relation to Religious Duty* (1852)¹⁹⁹
- [E]verybody made good use of their liberty.
—Gilbert Cannan, *Transl. of Jean Christophe* (1910–1913)²⁰⁰
- [N]o one is ever safe . . . unless they always remember.
—Anne Douglas Sedgwick, *Adrienne Toner* (1922)²⁰¹

190 Eagleson, *supra* note 7, at 97.

191 GIDI & WEIHOFEN, *supra* note 16, at 30 (quoting Ronald Reagan, President, Remarks to Citizens in Concord, New Hampshire (Sept. 18, 1985)).

192 *Id.* (quoting George H.W. Bush, President, Address Before a Joint Session of the Congress on the State of the Union (Jan. 29, 1991)).

193 *Id.* (quoting Barack Obama, President, Statement by the President on the Supreme Court’s Ruling on Arizona v. the United States (June 25, 2012)).

194 MCKNIGHT, *supra* note 82, at 528 (emphasis omitted).

195 *Id.* (emphasis omitted).

196 *Id.* (emphasis omitted).

197 *Id.* at 529 (emphasis omitted).

198 *Id.* (emphasis omitted).

199 *Id.* (emphasis omitted).

200 *Id.* (emphasis omitted).

201 *Id.* (emphasis omitted).

- [T]each anyone how to arrange their lives.
—Sheila Kaye-Smith, *The End of the House of Alard* (1923)²⁰²
- [E]verybody has to take their chance.
—James Stephens, *The Crock of Gold* (1912)²⁰³
- [E]veryone of those belong to the Middle Ages.
—George Moore, *Hail and Farewell* (1911)²⁰⁴
- [E]verybody ought to look where they are going.
—Frank Swinnerton, *Nocturne* (1917)²⁰⁵
- I have never known any one myself who achieved style in their first piece of work.
—Lord Dunsany, *Literary Review* (1921)²⁰⁶
- Every one's got to decide for themselves.
—Rose Macaulay, *Potterism* (1920)²⁰⁷
- Every one in this age sought . . . justification of their own activities.
—A. E., *The Interpreters* (1922)²⁰⁸
- Little did I think . . . to make a . . . complaint against a person very dear to you, but don't let them be so proud . . . not to care how they affront everybody else.
—Samuel Richardson²⁰⁹
- Everybody fell a laughing, as how could they help it?
—Henry Fielding²¹⁰
- Some people say that if you are very fond of a person you always think them handsome.
—Henry Jones²¹¹
- Everyone was absorbed in their own business.
—Andrew Motion²¹²
- Nobody stopped to stare, everyone has themselves to think about.
—Susan Hill²¹³

202 *Id.* (emphasis omitted).

203 *Id.* (emphasis omitted).

204 *Id.* (emphasis omitted).

205 *Id.* (emphasis omitted).

206 *Id.* (emphasis omitted).

207 *Id.* at 530 (emphasis omitted).

208 *Id.* (emphasis omitted).

209 Eagleson, *supra* note 7, at 96.

210 *Id.*

211 *Id.*

212 *Id.* at 97.

213 *Id.*

- His own family were occupied, each with their particular guests.
—Evelyn Waugh²¹⁴
- You just ask anybody for Gordon Skerrett and they'll point him out to you.
—F. Scott Fitzgerald²¹⁵
- “There’s a bus waiting outside the terminal to take everybody to their hotels,” said Linda.
—David Lodge²¹⁶
- Why does everybody think they can write?
—Ernest Hemingway²¹⁷

Appendix B – Example usages of they as a singular third-person generic pronoun before 1800 in American legal writing

- If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death.
—Laws of the Massachusetts colony (1647)²¹⁸
- [O]ne or two able persons annually chosen by each towne, who shall be sworn at the next county Court . . . unto the faithfull discharge of his or their office.
—Laws of the Massachusetts colony (1647)²¹⁹
- If any man or woman shall LYE WITH ANY BEAST . . . they shall surely be put to death.
—Laws of the Massachusetts colony (1647)²²⁰
- [T]he same Court of Magistrate shall appoint a Committee of discreet and indifferent men to view such incumbrance, and . . . they shall require them to appear at the next Court.
—Laws of the Massachusetts colony (1647)²²¹
- [A]ny Merchant or Master of any ship, belonging to any place not in . . . the State of *England*, or our selves, so as they depart again . . . and behave themselves.
—Laws of the Massachusetts colony (1647)²²²

214 *Id.*

215 *Id.*

216 *Id.*

217 EVANS & EVANS, *supra* note 17, at 196.

218 THE BOOK OF THE GENERAL LAUUES AND LIBERTYES, *supra* note 21, at 5.

219 *Id.* at 3.

220 *Id.* at 5.

221 *Id.* at 25.

222 *Id.* at 26.

- [T]hat no Indian shall at any time powaw, or performe outward worship to their false gods: or to the devil in any part of our Jurisdiction; whether they be such as shall dwell heer, or shall come hither.
—Laws of the Massachusets colony (1647)²²³
- [I]f any servant shall flee from the tyrannie and cruelties of his, or her Master to the house of any Freeman of the same town, they shall be protected and sustained till due order be taken for their relief.
—Laws of the Massachusets colony (1647)²²⁴
- [T]hat in the times of danger the watches & wards shall be set by the militarie Officer, in such place as they shall judge most convenient.
—Laws of the Massachusets colony (1647)²²⁵
- [T]hat the Watch . . . shall examin all persons that they shall meet withal within the compasse of their Watch or Round: and all such as they suspect they shall carry to the Court of Guard . . . and before they be dismissed they shall carrie them to their chief Officers.
—Laws of the Massachusets colony (1647)²²⁶
- That when any Ship is to be built within this Jurisdiction, or any vessel above thirty tuns, the Owner, or builder in his absence shall before they begin to plank, repair to the Governour.
—Laws of the Massachusets colony (1647)²²⁷
- [T]he Court, both for the time and expenses, which they shall Judg to have been expended . . . as the merit of the cause shall require, but if they find the defendant in fault, they shall impose the just charges upon such defendant.
—Laws of the Massachusets colony (1649)²²⁸
- [A]ny Court . . . may discharge any such person from imprisonment if they be unable to make satisfaction.
—Laws of the Massachusets colony (1649)²²⁹

²²³ *Id.* at 29.

²²⁴ *Id.* at 39.

²²⁵ *Id.* at 42.

²²⁶ *Id.* at 41.

²²⁷ *Id.* at 48.

²²⁸ THE BOOK OF THE GENERAL LAVVES AND LIBERTYES CONCERNING THE INHABITANTS OF THE MASSACHUSETTS, MAY 1649 2 (Cambridge 1660).

²²⁹ *Id.* at 31.

- [E]very such person upon examination and legal conviction before the Court . . . shall be committed to close prison, for one Month, and then unless they choose voluntarily to depart . . .
—Laws of the Massachusets colony (1649)²³⁰
- And every person found Drunken . . . being Lawfully convict thereof, and for want of payment they shall be in prisoned till they pay . . .
—Laws of the Massachusets colony (1649)²³¹
- And if any person offend in drunkenness, excessive or long drinking, the second time, they shall pay double fines. And if they fall into the same offence a third time, they shall pay treble fines.
—Laws of the Massachusets colony (1649)²³²
- It is Ordered, that the Clerk of the Writs in the several Towns, shall Record all Births & Deaths of persons in their Towns, and for every Birth and Death they Record, they shall be allowed Three-pence.
—Laws of the Massachusets colony (1649)²³³
- [T]hat no Man shall be forced to Receive any corne, wood, or boards, (except as they Agree thereonto).
—Laws of the Massachusets colony (1649)²³⁴
- And it is further Ordered, that where any town shall increase the number of one hundred miles . . . they shall let up.
—Laws of the Massachusets colony (1649)²³⁵
- That if it shall so happen that none shall appear to bid for the aforesaid Excise in any of the Cities, Towns or Countries, on the days appointed, and on which they are to be let.
—Laws of the Colony of New York (1709)²³⁶
- And that the said Meeting be careful in the Choice of their . . . Grand-jury men, that they Choose men of known Abilities, Integrity and good Resolution.
—A Proclamation by the Governour of Connecticut (1715)²³⁷

230 *Id.* at 36.

231 *Id.* at 44.

232 *Id.* at 45.

233 *Id.* at 68.

234 *Id.* at 80.

235 *Id.* at 71.

236 *An Act for Laying an Excise on All Liquors Retail'd in this Colony*, in *LAWS OF THE COLONY OF NEW YORK 1* (New York 1709).

237 GURDON SALTONSTALL, *BY THE GOVERNOUR, A PROCLAMATION 1* (New London 1715).

- That every Captain within this Province, already appointed, or that shall hereafter be appointed . . . within the Districts or Division of which they are Captain.
—Acts Passed by the General Assembly of the Province of New Jersey (1718)²³⁸
- And be it further Enacted by the Authority aforesaid, That every Retailer . . . shall also take and have . . . a Permit . . . for which Entry and Permit they shall pay *One Shilling*, and no more.
—Act of the Pennsylvania Province General Assembly (1719)²³⁹
- [F]or had we not come to an agreement with Spain, their attempt upon Jamaica was not a chimerical one. They had felt the disadvantage to them of that island being in our hands, from whence the Squadron was supported, that blockt up their galeons, and that they have long had an eye upon it appears from Monsr.
—Charles Delafaye, After Treaty of Seville (1729)²⁴⁰
- [A]nd the Court, may upon Presentment of the Grand-Jury, if they think fit, oblige the Party presented, to answer such Presentment without any formal indictment.
—Laws of Maryland (1730)²⁴¹
- That no Person or Persons whatsoever, shall transfer or make over to another Person or Persons, any Tobacco-Plants, which he, she, or they shall have growing on his, her, or their Plantation.
—Laws of Maryland (1730)²⁴²
- [W]hich Jury, upon their Oath, . . . shall enquire, assess, and return what Demonstrated Recompence they shall think fit.
—Laws of Maryland (1730)²⁴³
- It seems as if the Assembly are of the opinion, that if the S.S. Company did not carry on the Assiento Contract, they should have a very great trade with the Spanish settlements. It is to

238 ACTS PASSED BY THE GENERAL ASSEMBLY OF THE PROVINCE OF NEW-JERSEY 107 (New York City 1720).

239 THE STATUTES AT LARGE OF PENNSYLVANIA, *supra* note 22, at 229.

240 CHARLES DELAFAYE, *After Treaty of Seville*, in 36 THE CALENDAR OF STATE PAPERS, COLONIAL: NORTH AMERICAN AND THE WEST INDIES 1574–1739 579–81 (1729).

241 MARYLAND, LAWS OF MARYLAND, 1730 8 (Annapolis, William Parks 1730).

242 *Id.* at 8.

243 *Id.* at 28.

be feared not so great as they have now. The Company have brought a trade to Jamaica with the server parts of New Spain, they have not deprived the inhabitants of any branch.

—William Wood, *Observations on the Assiento Contract* (1732)²⁴⁴

- The Company are unjustly treated by being charged with bringing a loss to the island of 1200 seamen, and near 200 vessels employed in the Bays of Campeachy and Honduras. They had no hand in depriving any of H.M. subjects . . . and what vessels they may licence to trade thither, they are warranted to do.

—William Wood, *Observations on the Assiento Contract* (1732)²⁴⁵

- [E]very member shall . . . meet annually, at the Redwood-Library, at Ten of the Clock in the Forenoon, on every last Wednesday of September; where and when . . . they shall choose eight Directors, a Treasurer, a Secretary, and a Librarian.

—Laws of the Redwood-Library Company (1765)²⁴⁶

²⁴⁴ WILLIAM WOOD, *Observations on the Assiento Contract*, in 39 THE CALENDAR OF STATE PAPERS, COLONIAL: NORTH AMERICAN AND THE WEST INDIES 1574–1739 187–89 (1732).

²⁴⁵ *Id.*

²⁴⁶ REDWOOD LIBRARY COMPANY, *supra* note 23, at 4.